

4-18 I thought this was  
1-kept yr.  
Jan

8507  
Physical  
also eno heard  
(deaf)

THE TRIAL COURT  
COMMONWEALTH OF MASSACHUSETTS

3178

Hampden, ss

Hampden Division

No. 88-SP-7613-S

Housing Court Department

PEABODY PROPERTIES, INC.,	)
Plaintiff	)
v.	)
DOROTHY JEFFRIES,	)
Defendant	)

MEMORANDUM OF FINDINGS,  
RULINGS, ORDER FOR ENTRY  
OF JUDGMENT, AND  
INJUNCTIVE ORDER

// This for-cause summary process action involving an  
MHFA/federally subsidized unit was tried on December 8 and  
December 9, 1988, after which the following Findings, Rulings,  
and Order are to enter:

FINDINGS

1. The defendant (tenant) has lived in the subject unit for approximately five years. She lives alone. The tenant has been disabled (deaf) since she was five years old, and communicates mainly through signing and through the use of written notes. She is able to communicate with others verbally only to an extremely limited extent.

2. The tenant's share of the subsidized rent is approximately \$112.00. It was uncontested that the tenant was in

arrears in rent in the amount of \$788.00 through the end of December, 1988. The tenant represented to the court that these funds are available and that she would be able to comply with any court order that may enter regarding payment of the rent arrears.

3. The termination notice dated July 19, 1988 (Stip. Ex. #5) recites three grounds for the termination. The first two are based on essentially the same underlying facts: breach of paragraphs F(2) and (14) of the lease (Stip. Ex. #4) by unlawful, noisy, or offensive use of the leased premises and interference with the rights of other residents to privacy, security, and peaceful enjoyment. The third ground relates to the delinquent rent payments referred to above.

4. It is important to make clear the incidents that are before the court, as set forth in the termination notice. These incidents consist of "taunts and harassment" of security guards in January and February, 1988 and in July, 1988, during which the tenant allegedly knocked over trash cans and threw trash around the common areas, the posting of a sign on the tenant's door on June 24, and an attack on a security guard on June 25. Evidence of other incidents in which the tenant was allegedly involved-- specifically, a prior attack on tenant James Bradley and an incident on December 4, 1988-- may not be considered by the court in reaching its judgment because the former incident was not included in the notice to quit and the latter occurred well after the notice had been served. Those incidents, however, may be considered by the court insofar as they affect equitable orders.

5. The evidence as to the January and February incidents was in the form of the testimony of James Bradley, of Benjamin Davis, a security guard assigned to the building, and of incident reports made by the security guards to Site Administrator Jerome Alexander (Pl. Ex. #s 2,3,4,6). These exhibits were offered as business records. No objection having been raised to them, they are in evidence.<sup>1</sup> As to the January /February incidents, I find based upon the evidence from these sources that the tenant pointed and made "throat slitting" gestures and noises at Mr. Bradley, that a friend of the tenant's called a security guard "stupid," that the tenant on several occasions was seen spitting or kicking at walls in the common areas, that she opened windows in the cold weather, and that she pointed and gestured at people in the common areas.

6. As to the July incidents, the evidence was exclusively from incident reports, which state that the tenant was "making a disturbance," "disturbing guard," "kick over cans," "came down hallway star trouble Point her finger at me Call me Name Witch I dont Uerstand... came down hall yell and talking loud," "slap me for no reason... the police... are tired her [expletive] Jerome you should have her put out she also told me to kiss her ass."

<sup>1</sup> At least some of these documents might have been objectionable. First, the reports of the security guards contain their opinions or interpretations of the defendant's actions ("Jerome you should have her put out"; tenant "call me name which I don't understand"). See Wilk v. Rathore, 21 Mass. App. Ct. 399 (1986). Second, those making the record were not there to testify in all cases, a requirement the court may and perhaps should impose for business records of the relatively subjective kind offered here. G.L. c. 233, § 78.

7. Although this evidence supports a finding that the tenant has engaged in inappropriate and disruptive behavior, it is insufficient to support a finding that in connection with the January, February, and July incidents she threatened or assaulted anyone physically. ✓

8. In addition to the above, the evidence established that in June, 1988, the tenant placed a crude handwritten sign on her door which stated "Warning, Poison Oil and Gas... Their want kill me."

9. There was further evidence from Springfield Housing Code Enforcement Department Inspector Richard Magdycz that he inspected the tenant's unit in October, 1988. Based upon his testimony and that of other witnesses, I find that the tenant's unit has been maintained in a disorderly condition, strewn with bags, beverage containers, and the like. Mr. Magdycz testified that a month after having been cited for these violations, the tenant had not yet corrected them. ✓

10. While conceding that on occasion her behavior may have been inappropriate, the tenant nevertheless points to two related factors tending to mitigate her conduct. First, her disability makes it very difficult for her to communicate with others. Deprived almost entirely of speech due to her deafness, she must communicate with gestures, facial expressions, and noises that may be interpreted by others as aggressive or offensive but are not intended as such. My observations of the tenant's demeanor at trial bear out her contention on this point; the grimaces and ✓

gestures incident to non-verbal communication can appear somewhat alarming to those unaccustomed to them. And when her actions are somewhat aggressive, she claims, this is caused in significant part by frustration over her difficulty in communicating with others, and by their unsympathetic reaction to her.

11. Second, the tenant claims that her unit and/or the common areas have been affected by an unidentified, chemical-like odor that causes her distress (headaches, tightness in the throat) and makes it difficult for her to breathe. When she has tried to communicate this problem to others (particularly to the security guards late at night), their apparent indifference or hostility to her has made her even more isolated, frustrated, and has added to her actual or perceived behavior problems. Further, when she has opened windows to ventilate the area, or has been seen spitting, she is unable to communicate that these actions are responses to the odor and the physical symptoms it causes in her.

12. Two witnesses in addition to the tenant testified regarding the odor in the premises. One witness, Reverend Cofield, testified that in October, 1988, while in the tenant's unit, he experienced an unidentified "chemical smell or scent" that he could feel in his nose and throat, a sensation that remained with him for half the day. Jewell Mitchell, an acquaintance of long standing, detected in the hallway near the tenant's unit a "weird chemical smell-- like mild ammonia." The totality of the evidence was sufficient to establish at least a

reasonable possibility that some fumes or odor affect the unit; no substantial evidence, however, was introduced tending to establish the cause or source of those fumes.<sup>2</sup> Although this problem has been brought to the attention of the landlord both by the tenant herself and by others on her behalf, there was no evidence that the landlord has undertaken an investigation to determine its cause.

13. The evidence further established two incidents which, as noted above, are not before the court pursuant to the notice to quit. First, some time in late 1987 the tenant, without provocation, slapped or hit James Bradley. Second, on December 4, 1988, a serious disturbance occurred during which the tenant, in an extremely upset state, damaged walls and ceilings in the common areas, spread trash around the common areas, and was arrested.

14. The evidence further indicated that until the recent past the tenant had a door flasher (as opposed to a doorbell) to alert her when guests arrived. Evidently, this device was removed not long ago. As a result, the tenant's guests must knock or pound on the door to try to get her attention, a situation that is calculated to bother other residents and security guards alike.

---

<sup>2</sup> Two suggestions about possible sources of the odor were, however, raised at trial: the possible presence of urea formaldehyde insulation, and the possible use or preparation of the drug "crack" near the tenant's unit.

## RULINGS

15. As both parties recognized at trial, the situation presented is a difficult and sensitive one. It appears-- and this was conceded by the tenant-- that the tenant's conduct, if exhibited by one not disabled, would likely serve as good cause for termination of tenancy. On the other hand, serious disabilities are involved in this case. They cannot be ignored by the court, and anyone inclined to ignore them would do well to remember that tomorrow's accident or disease could leave any of us immobile, in darkness, or in the silent world of Dorothy Jeffries.

16. When it comes to federally subsidized housing, the moral duty we owe to those with disabilities is also a legal one, embodied in section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794. This statute and regulations thereunder require those who receive federal funds to make "reasonable accommodations" for those with disabilities. The law requires reasonable accommodation for both physical and mental disabilities. See *Southeastern Community College v. Davis*, 442 U.S. 397 (1979); *Majors v. Housing Authority of the County of DeKalb, Georgia*, 652 F.2d 454 (5th Cir. 1981). Essentially the same standard as a matter of state law is found in the Massachusetts Constitution, Art. 114.

17. The duty to make reasonable accommodations for those with disabilities does not however, require a landlord, subsidized or not, to keep as a tenant one who causes substantial

harm to the person or property of others despite the landlord's reasonable accommodation.

18. In this case, there was no evidence concerning what the plaintiff has attempted to do to make accommodation for the defendant's disability. The court will retain jurisdiction over this case until further order. If during the time the case is pending before the court the plaintiff shows that it has made reasonable accommodation but that nevertheless the defendant is responsible for substantial or repeated violations of the lease, appropriate relief, as stated below, will be available.<sup>3</sup>

#### ORDER FOR JUDGMENT

19. Based upon all of the evidence in light of the governing law, I must rule at this time that the landlord has not proved good cause for the termination of this tenancy because it has not shown that the situation cannot be controlled with

<sup>3</sup> It is not the role of a court in the first instance to provide the details of reasonable accommodation. Some direction, however, is found in the evidence of this case. First, on the facts presented, a reasonable investigation should be made as to whether an offensive or noxious odor is present in the tenant's unit and, if so, it must be corrected. Second, it might be appropriate for interpreter services to be provided to a reasonable extent so that the parties can communicate their concerns with each other. Third, a visual indicator might be ~~reinstalled in the tenant's unit to alert her when guests have arrived.~~ Fourth, some training and supervision might be provided for security guards and other personnel who come into contact with the tenant to help those individuals interpret her attempts to communicate. This list is for guidance purposes only and is not intended to be exclusive or exhaustive. The parties are requested to stipulate in good faith as to the steps that are to be taken in reasonable accommodation of the tenant's disability, and may apply to the court for an order on that issue if a stipulation cannot be achieved.

IMP.

Landlord to show new signs

reasonable efforts to accommodate the tenant in light of her disability. Therefore, the court must enter a judgment for possession for the defendant.

20. Because the rent debt is uncontested, a judgment is to enter for the plaintiff for \$788.00. Although the landlord is entitled to get paid, this case is not at heart about nonpayment or late payment of rent and it would be out of proportion to allow the eviction to go forward for a relatively small amount of money where the landlord can be made whole (at trial the tenant represented that the rent money is available).

#### INJUNCTIVE ORDER

21. The tenant is to pay the money judgment herein and the rent as it becomes due unless the court otherwise orders for good cause shown;

22. As suggested above, n.3, the parties are to file a stipulated order as to the steps that will be taken that constitute reasonable accommodation given the nature of the disability involved and the facts of this case. The stipulation (or order, if stipulation cannot be reached) is to be implemented in a reasonable manner on a reasonable schedule.

23. So long as the plaintiff is making good faith, reasonable accommodation for the tenant's disability, the following standards are to apply to the tenant's conduct:<sup>4</sup>

---

<sup>4</sup> This Order is not intended to modify the legal obligation of the tenant to observe the requirements of the lease. If, however, the plaintiff seeks in the future to recover possession

24. The tenant is not to engage in conduct constituting a substantial interference with the rights or quiet enjoyment of other residents. Without limiting this requirement, the tenant is not to initiate any physical contact with any other resident, guest, or staff member of the landlord, except such minor contact as is necessary to communicate (such as a tap on the shoulder to get attention), and the tenant is not to initiate any contact with Mr. James Bradley;

25. The tenant is to maintain her unit free of fire, safety, and sanitary hazards consistent with the requirements of the State Sanitary Code and other applicable Codes, and is to allow reasonable inspections by the landlord to verify that she is in compliance with this paragraph;

26. The tenant is not to cause any intentional or reckless harm to the property of the landlord or any other resident, and is not to engage in any intentional or reckless misuse of the premises, such as spitting or spreading trash in common areas.

27. In addition to the above, at the request of the plaintiff, and if necessary to protect the quiet enjoyment of other residents, the court would consider entering an order restricting the common areas to which the tenant may have access.

28. This order is to be dissolved, the case dismissed, and the tenancy reinstated six months from the below date, provided,

---

through this action, the Order is intended to require the plaintiff to show that the tenant has substantially or repeatedly violated the lease despite the plaintiff's reasonable accommodation, or that the lease violation(s) are such that they could not be prevented or controlled through reasonable accommodation

that the parties have substantially complied with the above order during that time.

29. The tenant must understand that so long as the landlord complies in good faith with the requirements of this order, any substantial breach thereof on her part may result in the only remedy calculated to protect other residents and the landlord: an order vacating the judgment for possession in her favor and entering judgment for possession for the plaintiff. Those friends and advocates who appeared on the tenant's behalf are requested to provide whatever assistance is feasible, including securing appropriate services, in the hope that sufficient protection for others involved in this case can be achieved and the eviction thus avoided.

So entered this 6 day of January 1988.

[sic. Actually, 1989.]

William H. Abrashkin

William H. Abrashkin  
Presiding Justice

# Massachusetts Law Reform Institute

69 Canal Street, Boston, MA 02114

(617) 742-9250

(617) 742-5123 TDD

February 16, 1989

TO: Jeff Purcell, et al. MLRI Housing Attys  
Theresa Hoover, Commission for the Deaf and  
Hard of Hearing  
✓ Bill Crane, DLC  
Bob Fleischner, CPR  
Cristy Barsky, GBLS  
Judy Gansberg, Deaf Community News

FROM: Tony Winsor

RE: Hampden County Housing Court enters Stipulated  
Order for reasonable accommodation of deaf  
tenant

---

This is a follow-up to my memo to most of you of  
1/17/89 on the Peabody Properties case.

Enclosed herewith is a copy of the Stipulated Order  
(agreed to by the parties and entered by the court, on  
2/13/89) providing, inter alia, that the landlord (1) will  
maintain visual indicators in the tenant's apartment  
connected with the building intercom and (2) fire alarm  
systems; (3) the landlord will provide an interpreter for  
formal occasions of L-T communication; and (4) the tenant  
will provide training for the security guards and staff,  
i.a., "to increase their understanding of and sensitivity to  
the needs . . . of . . . deaf persons."

Note that I have, at the suggestion of Cristy Barsky,  
redacted the plaintiff's name. Though she understands that  
the case is a public record, Cristy says that the Deaf  
community is especially privacy sensitive. You may wish to  
take this into account in any dissemination you give of  
these materials.

EW:lp

Encl.

LAW OFFICES  
WESTERN MASSACHUSETTS LEGAL SERVICES INC.  
145 STATE STREET  
SPRINGFIELD, MASSACHUSETTS 01103  
TEL. 413 - 781-7814

February 21, 1989

Hon. William H. Abrashkin  
Housing Court of Hampden County  
37 Elm Street  
Springfield, MA 01103

RECEIVED

FEB 27 1989

Re: Peabody Properties v. Jeffries  
SP-7613

Dear Judge Abrashkin:

It has been pointed out to me that there is a mutual mistake in the Stipulated Order recently filed in the above-referenced case. Paragraph 4 should require the plaintiff rather than the defendant to provide training. I have discussed this with Mr. Mancuso, who confirmed that it was his understanding that this is to be the responsibility of the landlord.

If you feel that an amendment to the Order is appropriate, please so advise and I will prepare a suitable document.

Sincerely,

Peter Benjamin  
Attorney

PB/idr

cc: Charles S. Mancuso, Esq.

Handwritten initials: "W.C." and "7"

RECEIVED  
1989 FEB 24 4 30  
HAMPDEN COUNTY  
COUNTY OF HAMPDEN

HAMPSHIRE COUNTY  
28 CENTER STREET  
NORTHAMPTON, MA 01060  
(413) 584-4034

NORTHERN HAMPDEN COUNTY  
57 SUFFOLK STREET  
HOLYOKE, MA 01040  
(413) 536-2420

FRANKLIN COUNTY  
58 FEDERAL STREET  
GREENFIELD, MA 01301  
(413) 774-3747

SOUTHERN HAMPDEN COUNTY  
& ADMINISTRATIVE OFFICE  
145 STATE STREET  
SPRINGFIELD, MA 01103

BERKSHIRE COUNTY  
150 NORTH STREET  
PITTSFIELD, MA 01201

COMMONWEALTH OF MASSACHUSETTS

THE TRIAL COURT

HAMPDEN, SS.

HOUSING COURT DEPARTMENT  
HAMPDEN COUNTY DIVISION  
NO. 88-SP-7613-S

PEABODY PROPERTIES, INC.,

Plaintiff

v

Defendant

STIPULATED ORDER

Pursuant to the Court's order of January 6, 1989, the parties hereby stipulate to the entry of this order setting forth steps which the plaintiff will take in order to make reasonable accommodation for the defendant.

1. The plaintiff has installed and will maintain in good working order a visual (light) indicator connected to the building's intercom system, so that the defendant will be made aware of the arrival of guests.

2. The plaintiff has installed and will maintain order a visual indicator, visible from any location within the defendant's apartment, sufficient to alert the defendant in the event of fire.

↪ C/M

x]

3. The plaintiff will provide, to a reasonable extent, interpreter services so that the parties can communicate effectively with each other. Such services will be offered, in addition to other appropriate occasions, for any recertification conducted in connection with subsidy eligibility and for any MHFA conference which may be required.

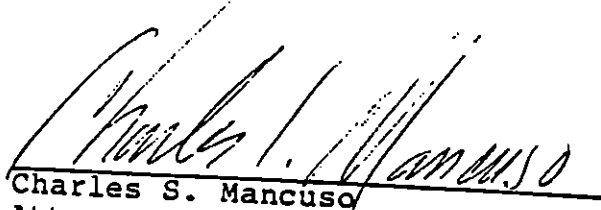
B  
C/M

4. The defendant shall provide appropriate training for all security guards and other staff in the building who may come into contact with the defendant. Such training shall be designed to attempt to improve the ability of such personnel to interpret the defendant's attempts to communicate and to increase their understanding of and sensitivity to the needs and special problems of the defendant and other deaf persons.

5. The plaintiff shall make all reasonable efforts to determine whether any offensive or noxious odor or any harmful or irritating fumes are present in defendant's apartment. At a minimum, the plaintiff shall request an inspection by the Housing Code Enforcement Department or other appropriate agency of the City of Springfield and shall engage the services of an independent investigator having expertise in the field. A copy of the report of any such investigation shall be promptly provided to defendant's counsel. In the event any such odor or fumes are detected, the plaintiff shall correct the problem as

soon as possible.

Dated: 2/9/89



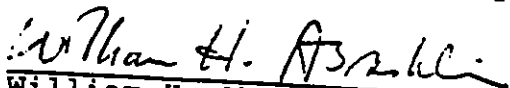
Charles S. Mancuso  
Attorney for Plaintiff  
265 Washington Street  
Westwood, MA 02090  
(617) 329-3339

Dated: 2/3/89



Peter Benjamin  
Attorney for Defendant  
Western Mass. Legal Services  
145 State Street  
Springfield, MA 01103  
(413) 781-7814

Approved and so ordered  
this 13<sup>th</sup> day of February, 1989

  
William H. Abrashkin  
Presiding Justice