

**Jury Orders Landlord to Pay \$60,000!
(Are Former Drug Addicts Considered Handicapped?)
By Scott M. Clark, Attorney**

While it is understood that the Fair Housing Act does not protect current abusers of illegal drugs, it can protect individuals in recovery or those who have successfully completed a drug rehabilitation program.

A federal court addressed this issue. In this case, a drug and alcohol abuse program housed its participants in a certain facility where they received counseling and therapy and received drug-use tests on a regular basis. After completing the program drug-free for one year, the program placed them in an apartment community the group leased. The group monitored the individuals and conducted drug tests twice a month. Participants testing positive for drugs or who violated other rules of the program faced termination from the program and eviction from the apartment community.

“individuals who have been perceived as being a drug user or an addict are covered under the definition of handicap...”

The group approached an apartment owner who refused to rent to the group. The group brought suit claiming the refusal to rent was illegal discrimination against handicapped individuals. At trial, the jury returned a verdict for the group, finding a violation of the participants' rights. It awarded the group \$10,000 in damages and assessed a \$50,000 penalty against the apartment owner.

The court further ordered the owner to rent to these participants and screen them under normal criteria. It also stated that the owner could evict them if they did not adhere to the program's requirements.

The owner appealed the case, arguing first that the participants were not persons who would be deemed to have a “handicap.” The definition of handicap included an inquiry into whether they had a substantial limitation upon “one or more ... major life activities.”

The court looked to another case that involved employment discrimination. It stated that this inquiry is not just limited to a determination as to whether or not impairment results in a diminished physical or mental capability, but that it can even include a person's capability to maintain or obtain a job. Thus, in this case, the court concluded that their inability to obtain housing meant that they were being denied a major life activity (obtaining housing) and they are handicapped because of the apartment owner's perception that a substance abuser would be an undesirable renter.

The apartment owner also argued that if the participants were addicts, such a status was enough to deny them housing. The argument is that an addiction would forever bar the applicant from seeking an apartment. The court rejected this interpretation and commented that the intent of fair housing law is to cover persons who recovered from their addiction or were participating in a treatment program. The court stated, **“individuals who have been perceived as being a drug user or an addict are covered under the definition of handicap if they can demonstrate that they are being regarded as having an impairment and that they are not currently using an illegal drug.”**

An owner of an apartment community, as well as managers, should be aware of this limitation on the disqualification of potential applicants.

Scott M. Clark, Attorney at Law may be reached by calling (602) 957-7877. Reprint with permission of Apartment News, the official publication of the Arizona Multihousing Association.