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A Step Forward for New Yorkers Seeking Safe and Healthy Housing

Proskauer For Good Blog on **January 2, 2019**

A team of pro bono attorneys at Proskauer recently celebrated a significant step forward in their fight for safe and healthy housing for the more than 400,000 New Yorkers who live in apartments operated by the New York City Housing Authority ("NYCHA"), the largest public housing authority in the country. Federal Judge William Pauley in the Southern District of New York entered an order requiring NYCHA to implement enhanced procedures to ensure the effective and timely remediation of mold and excessive moisture. The order also creates independent oversight to ensure NYCHA's compliance with these obligations.

The Court's decision provides relief for a class of public housing tenants who suffer from asthma exacerbated by mold and water leaks. As NYCHA has reported, 150,000 NYCHA residents, including 35,000 children under the age of 15, live in developments located in "asthma hotspots" that generate the highest rates of asthma-related emergency room visits in New York City.

In December 2013, the National Center for Law and Economic Justice and Natural Resources Defense Council filed *Baez v. NYCHA*, 13 Civ. 8916 (S.D.N.Y.), a class action lawsuit on behalf of these tenants and two nonprofit community empowerment organizations, Manhattan Together and South Bronx Churches, with the goal of eradicating mold from NYCHA apartments. In 2014, the Court approved a consent decree in which NYCHA agreed to abate mold and excessive moisture problems within certain timeframes and to prevent the reoccurrence of these problems.

In December 2015, the Court appointed a Special Master to oversee NYCHA's compliance with the 2014 consent decree. Over the next two years, the pro bono team collaborated with NYCHA, the Special Master, and a mold remediation expert to design and test improved protocols for the abatement of mold and its underlying root causes, a program NYCHA named "Mold Busters."

But in February 2018, NYCHA informed the Plaintiffs that it could not implement the new Mold Busters program across all NYCHA developments until 2020, long after the original consent decree would expire. In the meantime, thousands of NYCHA tenants continued to suffer from frequent reoccurrences of their mold problems and many were being forced to wait months and even years for critical repairs. This was untenable.

Accordingly, Proskauer worked with NYCHA to formulate and propose to the Court an amended consent decree calling for (1) the elimination of reoccurrences of mold and excessive moisture; (2) the tightening of performance requirements obligating NYCHA to complete mold and moisture repairs in no more than fifteen days; (3) strict deadlines for implementing the new mold remediation techniques and protocols; (4) accurate reporting of NYCHA's compliance metrics; (5) the appointment of an independent mold expert and forensic data analyst to oversee NYCHA's compliance; and (6) the appointment of an independent ombudsperson who can address individual resident complaints and direct NYCHA to provide prompt relief.

At a pre-motion conference in July 2018, Judge Pauley stated that "there is no case of greater public importance pending before this Court" and indicated that the Court would assess whether the proposed consent decree would "meaningfully effect the urgently needed reform" and "improve the conditions faced by NYCHA tenants." The Court solicited public comments from interested individuals and organizations regarding whether the Court should approve the proposed decree.

With the Court's permission, the Proskauer pro bono team collaborated with Manhattan Together and South Bronx Churches to host three clinics in August 2018 at which they assisted approximately 75 NYCHA residents in understanding the proposed consent decree and preparing public comment letters to express their views to the Court. In addition, the team filed a motion urging the court to approve the amended consent decree. NYCHA did not oppose this motion.

After receiving more than 700 public comment letters, the Court held a public fairness hearing on September 26, 2018, at which the Court received live testimony from dozens of tenants who reported hazardous living conditions and urged the Court to afford relief.

In granting the motion to approve and enter the amended consent decree in November 2018, the Court found that "requiring NYCHA to address mold reoccurrence explicitly and to implement revised protocols and procedures with the Special Master and Independent Mold Analyst's assistance is suitably tailored to NYCHA's worsening mold reoccurrence rate . . . ." In addition, the Court found that "the addition of an Independent Data Analyst and a certification requirement for NYCHA's periodic reports is proper to address rampant inaccuracies in those reports," and "an Ombudsperson tasked with addressing tenant concerns over mold remediation efforts . . . is satisfactorily directed toward NYCHA's inability to complete 15-day repairs in a timely fashion . . . ."

The amended consent decree contemplates that NYCHA will fully implement the "Mold Busters" program across all NYCHA developments by December 2020.

It has been my privilege to lead this Proskauer pro bono team, which included associates Zachary Chalett, Amanda Johnson, and Brandon Clark; former associate Shiloh Rainwater; and project assistants America Garza and Alex Volpicello. The team also received support and assistance from associates Samantha Springer and Tara Brailey, law clerk Imani Tisdale, paralegals Jesse Feldstein and Margaret Lederer, and pro bono intern Adam Snyder.

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