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Court Recognizes Domestic Violence Survivor's Fair Housing Challenge to Eviction

by Danielle Pelfrey Duryea*

Hailed by the ACLU Women's Rights Project as "the first case ever to hold that the Fair Housing Act prohibits discrimination against domestic violence victims," *Bouley v. Young-Sabourin*¹ represents a significant advance for the housing rights of domestic violence survivors.² In a March 2005 decision denying cross-motions for summary judgment, the United States District Court for the District of Vermont recognized domestic violence survivor Quinn Bouley's claim of disparate treatment as a *prima facie* case of sex discrimination under the Fair Housing Act. Bouley settled favorably with her landlord in April before the case could go to trial.

Background: Domestic Violence, Women and Housing

United States Department of Justice statistics indicate that intimate partners inflicted 20% of all non-fatal violence against women in 2001 and about one-third of all homicides of women in 2000.³ Because about 85% of all intimate partner violence in the United States is committed against women, the far-reaching effects of domestic violence have a dramatically disproportionate effect on women.⁴ Although non-fatal intimate partner violence against women is down by about one-half since 1993,⁵ domestic violence remains a major reason for homelessness across the United States.⁶ More than a third of U.S. cities report domestic violence as a primary cause of

homelessness.⁷ Depending on their region of residence, between 22% and 57% of homeless women report that domestic violence was the precipitating cause of their homelessness.⁸ Whether they face losing shelter when they flee intrafamily violence or when they are evicted as a direct result of the violence, women living in poverty are at special risk.

Domestic violence survivors face a variety of forms of housing discrimination in admissions and occupancy, as well as in evictions.⁹ Women who have been complaining victims in a criminal proceeding may find themselves "screened out" of housing opportunities when their names appear in background checks. Mandatory arrest policies and courts that issue mutual protection orders may even result in criminal record checks that make victims appear to be perpetrators. A survivor often may not have a solid work or credit history or landlord references because the abuser has prevented her from holding a steady job, maintaining financial independence, or developing interpersonal relationships with others.

As a condition of tenancy, landlords sometimes demand that no violence occur in the future, a condition not imposed on other residents. Where a victim is living with her abuser but only the abuser's name is listed on the lease, authorities may assert that they cannot evict the perpetrator and allow the victim to continue her occupancy. A victim may be held financially accountable for her abuser's damage to a rental property. And anecdotal evidence from advocates in the field suggests that sex stereotype-based animus underlies much discrimination against domestic violence victims in admissions, occupancy and evictions.

Landlord Tried to Evict Within Seventy-Two Hours of Violent Domestic Incident

Jacqueline Young-Sabourin owns one three-unit private rental property in St. Albans, Vermont, that includes two rental apartments and a bungalow inhabited by her daughter-in-law and apartment manager, Windee Young. Three months after Quinn Bouley and her family rented one of the apartments, Bouley's husband attacked her at their home. Daniel Swedo was arrested the night of the incident and eventually pled guilty to several criminal charges related to the attack, including assault. Bouley applied for a restraining order against her husband on the night of the attack, and he never returned to the apartment.

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¹No. Civ.1:03 CV 320, 2005 WL 950632 (D. Vt. Mar. 10, 2005).

²Press Release, American Civil Liberties Union, Federal Law Protects Battered Women From Housing Discrimination, Court Rules (April 1, 2005), available at <http://www.aclu.org/WomensRights/WomensRights.cfm?ID=17883&c=173>. The decision and ACLU *amicus* brief are available at the same location.

³CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, INTIMATE PARTNER VIOLENCE 1993-2001 1 (2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ipv01.pdf>. The comparable figures for men victimized by intimate partners were 3% for nonfatal violence and 4% for murders. *Id.*

⁴See *id.* These statistics are for 2001.

⁵*Id.*

⁶Emily J. Martin and Naomi S. Stern, *Domestic Violence and Public and Subsidized Housing: Addressing the Needs of Battered Tenants Through Local Housing Policy*, CLEARINGHOUSE REV. 551, 552 (2005).

⁷*Id.* (citing 2003 survey).

⁸*Id.* (citing eleven national and regional studies).

⁹Telephone Interview with Naomi Stern, Staff Attorney, National Law Center on Homelessness and Poverty (June 22, 2005); Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 AM. U.J. GENDER SOC. POL'Y & L. 377, 384-85 (2003); Telephone Interview with Emily Martin, Staff Attorney, ACLU Women's Rights Project (June 20, 2005).

Apartment manager Young, on whose judgment Young-Sabourin relied, however, had already decided that Bouley “didn’t fit the role of a victim of domestic violence.” Not only had she not been in shock and was still able to function following the incident, observed Young, but she had also expressed anger toward her husband and showed no interest in reconciling with him. On deposition, Young explained further that she was also dubious of Bouley’s abuse claim because she had seen Bouley with a male visitor not long after the attack, and because Bouley had received attention from men in her workplace that the apartment manager found inappropriate.

The day after the attack, landlord Young-Sabourin made a list of reasons to evict Bouley that included the domestic violence incident. She then went to visit Bouley, engaging her in a conversation about the incident and about Bouley’s religious faith. The conversation apparently ended with Bouley angrily refusing to discuss religion with her landlord. Later that day, less than seventy-two hours after Bouley’s husband criminally attacked her, the landlord sent a letter giving Bouley thirty days’ notice to leave the apartment. The letter quoted a lease provision that read:

Tenant will not use or allow said premises or any part thereof to be used for unlawful purposes, in any noisy, boisterous, or any other manner offensive to any other occupant of the building.

Young-Sabourin’s letter further cited Bouley’s angry response to her religious inquiries as proof that “the violence that has been happening in your unit would continue.”

Survivor Points to Gender Stereotypes

Represented by Vermont Legal Aid, Bouley argued to the federal court that Young-Sabourin initiated eviction proceedings against her on the basis of her sex and her religion in violation of the Fair Housing Act. Initially, Bouley brought her sex discrimination claim under a disparate impact theory. Because women represent the great majority of domestic violence victims, the complaint alleged that discriminating against domestic violence victims on the basis of their victim status disproportionately affects women in violation of the Fair Housing Act. Cases such as *Alvera v. The C.B.M. Group* did much to establish a disparate impact theory for domestic violence victims threatened with eviction as a result of their abuser’s actions.¹⁰ Alvera, a plaintiff whose situation was similar to Bouley’s, argued that the defendant management company’s “zero-tolerance” policy against household violence—which had the effect of displacing both the perpetrator and the

victim of domestic violence—amounted to prohibited sex discrimination because the victims of domestic violence are disproportionately women. This approach has been sanctioned, too, by the Department of Housing and Urban Development’s Fair Housing and Equal Opportunity office, which issued a charge of discrimination against Alvera’s landlord on this basis. The *Alvera* case subsequently settled without judicial resolution of the Fair Housing Act claim’s validity.

As discovery in *Bouley v. Young-Sabourin* proceeded, however, Vermont Legal Aid attorney Meris Bergquist, working with the ACLU Women’s Rights Project, realized that there was more than disparate impact involved in the case. The landlord and apartment manager’s depositions clearly revealed that they believed that Bouley did not behave “normal[ly]” for a woman who had been victimized” and that she and her husband were equally responsible for the incident that led to his arrest and subsequent guilty plea. So Bouley’s cross-motion for summary judgment, supported by the ACLU’s *amicus curiae* brief, advanced a novel approach to domestic violence survivors’ sex discrimination claims under the Fair Housing Act: disparate treatment rather than disparate impact.

Under the disparate treatment theory, modeled on and analogous to the well-developed case law on employment discrimination under Title VII, housing discrimination against a woman because she fails to conform to sex or gender stereotypes violates the Fair Housing Act. Just as an employee cannot be denied a promotion because she is “too aggressive for a woman,” then, a tenant cannot be evicted because she fails to conform to a stereotype of appropriate feminine behavior for a victim of domestic violence.¹¹ According to an expert in the field of female abuse and victimization who submitted a declaration on behalf of Bouley, Young-Sabourin acted on three gender stereotypes:

1. that domestic violence can be provoked and that sometimes, as in this case, both parties are responsible;
2. that victims do not get angry and therefore that Bouley’s anger both at her husband and at Young-Sabourin was proof that she had violent potential; and
3. that men who appear “upright” and “honorable,” as Young-Sabourin perceived Daniel Swedo to be, do not beat their wives.¹²

Because Bouley’s behavior after the violent incident was not consistent with the landlord and apartment manager’s gender-stereotyped expectations of how a domestic violence victim “should” behave, and because they held a positive view of her husband, Bouley’s motion argued, they sought to evict her.

¹⁰*Alvera v. The C.B.M. Group, Inc.*, Civil No. 01-857-PA (D. Or. October 2001); see *Domestic Abuse Victim Settles Discriminatory Eviction Claim Favorably*, 31 Hous. L. Bull. 265, 265 (2001).

¹¹See *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989).

¹²See Pl.’s Cross Mot. for Summary Judgment at 10 (citing Decl. of Sharon Lamb, Ed.D.).

Court Denies Summary Judgment and Allows Fair Housing Claim to Proceed

Denying Bouley and Young-Sabourin's cross-motions for summary judgment, Judge J. Garvan Murtha stated without qualification that "[t]he plaintiff has demonstrated a prima facie case" of sex discrimination under the Fair Housing Act.¹³ Under the *McDonnell Douglas*¹⁴ burden-shifting framework, the timing of the eviction, combined with reasonable inferences a jury could draw from the eviction notice, were held to return responsibility to the landlord to assert a legitimate, non-discriminatory reason for the decision to evict Bouley. Having asserted no such reason, Young-Sabourin was not entitled to summary judgment.

The Court's brief discussion did not explicitly address the disparate treatment and disparate impact arguments. Although the Second Circuit has played a significant role in developing the disparate treatment law under Title VII, and even though that circuit has "pointedly accepted" the analogical relationship between Title VII and Fair Housing Act interpretation,¹⁵ the Court declined to elaborate on its reasoning, naming as authority for its determination a single case in which both disparate impact and disparate treatment were cited in opposition to a police policy treating domestic and non-domestic disputes differently.¹⁶ The ACLU *amicus* brief had discussed this case at some length, however, as judicial recognition that "treatment of domestic violence victims in a 'stereotypic and predefined place' within the family constitute[s] sex discrimination."¹⁷

More significantly, the fact that the Court applied the *McDonnell Douglas* test implies that it had disparate treatment, rather than disparate impact, in mind, as the *McDonnell Douglas* applies only to disparate treatment claims.

The Court also denied, though it did not discuss, Bouley's cross-motion for summary judgment.¹⁸

¹³Bouley v. Young-Sabourin, No. Civ.1:03 CV 320, 2005 WL 950632 at *5 (D. Vt. Mar. 10, 2005).

¹⁴McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973).

¹⁵ACLU Women's Rights Project, Mem. of Law as *Amicus Curiae* in Supp. of Pl.'s Mot. for and Opp'n to Summary Judgment at 11 (quoting Huntington Branch NAACP v. Town of Huntington, 844 F.2d 1096 (2d. Cir. 1988), *aff'd* 488 U.S. 15 (1988)); see also Pl.'s Cross Mot. for Summary Judgment at 7.

¹⁶Smith v. City of Elyria, 857 F. Supp. 1203, 1212-13 (N.D. Ohio 1994).

¹⁷ACLU, Mem. of Law as *Amicus Curiae* in Supp. of Pl.'s Mot. for and Opp'n to Summary Judgment at 4 (quoting *Elyria*, 857 F. Supp. at 1212).

¹⁸Presumably the Court did not accept her argument that, under the *Price Waterhouse* analysis of "mixed motives"—i.e., where there may have been both legitimate and illegitimate reasons for the adverse action—the *McDonnell Douglas* prima facie case concept did not apply. *Price Waterhouse v. Hopkins*, 490 U.S. 228 (finding firm liable where both legitimate and sex-discriminatory factors motivated its denial of partnership to a woman). Under this analysis, Bouley argued, she would have been entitled to summary judgment if the Court accepted: (1) that Bouley had established that gender was a motivating factor in the attempt to evict her; and (2) that Young-Sabourin would be unable to prove by a

Advocates' Best Lessons

The housing issues faced by domestic violence survivors have sometimes "fallen between the stools," according to both Emily Martin of the ACLU and Naomi Stern of the National Law Center on Homelessness and Poverty.¹⁹ Housing advocates have not always recognized the special plight of women threatened with homelessness as a result of intrafamily violence, and the women's rights community has sometimes misunderstood the nature of housing legal issues. And there has been little communication or cooperation between housing and domestic violence advocates. As a result, the law is underdeveloped. As Martin emphasizes, however, this is a "winnable fight": once educated about the problem, most law- and policymakers are sympathetic.

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Although both Stern and Martin lament the lack of detailed discussion in the Court's decision, both are optimistic about the future of the disparate treatment theory of sex discrimination against intrafamily violence survivors. "This [decision] is the clearest law we have yet," says Martin, while Stern characterizes sex discrimination under the Fair Housing Act as a "very powerful" theory that should be vigorously pursued to fill out the law in this area. Celebrating the *Bouley* litigation's partnership between a national advocacy organization and a zealous legal services attorney, both Stern and Martin emphasize the need for local advocates to think of domestic violence victims' housing issues as potential civil rights claims.

A variety of factors will suggest the best strategy for each case. Despite the fact that the disparate impact theory emerged first, Stern suggests that disparate treatment claims may ultimately prove more acceptable to courts than disparate impact claims, given general skepticism regarding the latter. Although both Stern and Martin emphasize that large public housing authorities are not necessarily less apt to discriminate against domestic violence victims on the basis of gender stereotypes, the disparate treatment theory may be better suited to cases involving non-institutional landlords. Martin notes that intent to discriminate and reliance on gender-stereotyped thinking may be easier to prove in smaller, less bureaucratic settings, such as in

preponderance of the evidence that she would have taken the same action for nondiscriminatory reasons alone.

¹⁹See Telephone interviews, *supra* note 9.

cases against private and tenant-based Section 8 landlords as well as small public housing authorities.

The ACLU's Lenora Lapidus has suggested that, in addition to Fair Housing Act claims, a domestic violence survivor living in public or other assisted housing may be able to bring constitutional claims.²⁰ Where seeking police assistance or obtaining a protective order has led to eviction, the survivor may be able to claim that public housing authorities chill and/or punish her exercise of the First Amendment right to petition the government. If intentional sex discrimination can be established, the survivor may have an equal protection claim under the Fourteenth Amendment. And, given that claims under the Equal Protection Clause require proof of intentional discrimination, notes Martin, rather than just disparate impact, a gender stereotype argument like the one made in *Bouley* may be especially helpful for constitutional claims.

Not only litigation, but also legislative and administrative advocacy, are essential tools for taming what Stern calls housing's "wasteland of sex discrimination." Responding to litigation and advocacy by a coalition of national civil rights, domestic violence and housing groups, the 2003 edition of HUD's Public Housing Occupancy Guidebook included new guidance that encouraged public housing authorities to prefer domestic violence victims in admissions and transfers, and to avoid evicting and terminating survivors for the actions of their abusers.²¹

National legislation to protect the housing rights of abuse survivors in public and other federally assisted housing is now pending before Congress.²² In addition to such efforts at the federal level, advocates are working to enact state legislation to prohibit housing discrimination against all domestic violence victims, not just those living in assisted housing. Rhode Island and Washington already have such statutes in force.²³ Wisconsin prohibits landlords from determining that someone's tenancy should be terminated on the basis that it poses a direct threat to others' safety or property on the basis of the tenant's domestic abuse status,²⁴ while Arizona invalidates any lease provisions waiving or limiting a tenant's right to call for emergency assistance in a domestic violence situation.²⁵ In spring 2005, Colorado passed legislation that provides a variety of new protections for domestic violence survivors (see box for further detail).²⁶ In New

Mexico, intimate partner violence is recognized as a defense in eviction actions as well.²⁷

Conclusion

"[W]hether or not someone subject to domestic violence is considered to be a 'victim' is intimately connected to ... 'good girl/bad girl' stereotypes."²⁸ The decision in *Bouley* represents a new judicial recognition that such stereotypes can result in violations of core fair housing rights. To develop the sex discrimination law in housing to match its power in the area of employment, local advocates must look to the civil rights dimensions of their work with domestic violence survivors facing housing crises. ■

²⁷N.M. Stat. § 47-8-33(J) (2004).

²⁸Zanita E. Fenton, *Domestic Violence in Black and White: Racialized Gender Stereotypes in Gender Violence*, 8 COLUM. J. GENDER & L. 1, 22 (1998) (quoted in ACLU, Mem. of Law as *Amicus Curiae* in Supp. of Pl.'s Mot. for and Opp'n to Summary Judgment at 5).

New Colorado Law Protects Housing Rights of Domestic Violence Survivors

Colorado has previously recognized domestic victimization as an eviction defense, but a new law, 2005 Colo. HB 1169 (codified at COLO. REV. STAT. §§ 13-40-104, 13-40-107.5(5), 38-12-402), offers affirmative protections to survivors of domestic violence and abuse. Legislation signed by Colorado governor Bill Owens on April 27 now provides that a domestic violence victim, as documented by police report or protective order, cannot be held liable for unlawful detention of real property as a result of abuse. It further establishes that abusive behavior cannot be considered a substantial violation of a lease by the victim of that abuse, and preserves the landlord's right to evict the abuser. Finally, the new law permits a victim to break his or her lease on written notice to the landlord.

The new law went into effect on July 1.

²⁰See Lapidus, *supra* note 9, at 383.

²¹See HUD, PUBLIC HOUSING OCCUPANCY GUIDEBOOK 215-21 (2003) (Chapter 19: Domestic Violence).

²²See *Violence Against Women Act Reauthorization Includes Significant New Housing Provisions* in this issue of the *Housing Law Bulletin*.

²³R.I. GEN. LAWS § 34-37-2.4 (2005); WASH. REV. CODE §§ 58.18.580, 59.18.352 (2005).

²⁴Wis. Stat. § 106.50(5m)(d) (2004).

²⁵A.R.S. § 33-1315 (2004).

²⁶COLO. HB. 1169 (2005).