



# INSIDE NLS

News from the front lines of Neighborhood Legal Services

March, 2019

## DANGEROUS HOUSING CONDITIONS LEAD TO TROUBLE FOR ONE CLIENT

Matt Finamore, a housing attorney based in our Niagara Falls Office, was helping “Helene.” Her landlord sued her alleging she owed \$1,300 in rent. Helene contested the amount, but even more importantly the apartment was infested with cockroaches. The roaches were inflicting painful bites on Helene and her son. Helene’s son even suffered an allergic reaction to the bites and broke out in hives. The landlord had her maintenance man, who had no training in pest control and toxic substances, spray pesticides and lay poisons but to no avail. To make matters worse, Helene was storing property in the basement which had been damaged by water leaks. Helene also said that parts of the ceiling fell in on her.

Matt tried to negotiate with the landlord and her husband. The husband, however, raged at Matt that his tax dollars paid Matt’s salary and used some other choice expletives that we will not repeat because this is a family publication!

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*“As long as poverty,  
injustice, gross  
inequality persist in our  
world, none of us can  
truly rest.”*

*- Nelson Mandela*

**NLS does not use the  
actual names of clients  
in *Inside NLS*.**



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## **DANGEROUS HOUSING CONDITIONS continued. . .**

By the time the case was called in court, the landlord had added another month's rent to the total. When the case was called, Matt assumed he would simply request a habitability hearing and the court would set another date to give the parties time to gather evidence and witnesses. The judge had other ideas and held the hearing that same day and it stretched on for more than two hours.

Fortunately for Helene, Matt had come prepared and had photos of the infestation, some of the receipts for damaged property, the DSS payment log indicating inconsistencies in landlord's books, etc. and was able to pull it all together through his direct and cross-examination.

When the landlord cross-examined Helene, she asked about a clause in the lease that held the landlord harmless for any habitability issues. Matt could have objected because New York State law prohibits contractual limitations on the warranty of habitability. Helene, however, needed time to move so he asked for time to brief the matter which would buy Helene more time.

When the judge didn't issue a decision after a few weeks, Matt called the Court to check the status of the case. Turns out the landlord filed a response brief with the court but did not serve Matt or Helene. The court gave Matt the opportunity to file a reply brief. Things went back-and-forth with the landlord.

When the judge finally issued a decision, three months had passed since the landlord filed the proceeding. Because of the passage of time, Matt worried that Helene might owe another month's rent (a total of \$2,030.00). The judge, however, ruled that Helene owed **nothing** due to the conditions of the apartment. He also ordered that the landlord return Helene's security deposit of \$475.

Great job Matt!

## **Disability Secretary Lynn Urquhart shared this. . .**

"I was riding the Metrorail from UB one morning. The train car was crowded. An older man boarded the train and stood near the front door. He was poorly dressed, shivering, and talking to himself in low tones. Based on my experience at the front desk, I thought he might be homeless. There was an open seat right next to me, and I asked him if he'd like to sit down, which he did. He continued to shiver and quietly mumbled about feeling cold.

The many other passengers in the rail car looked at me with sideways glances, but no one spoke. It occurred to me that he might be hungry. I didn't feel comfortable opening my purse, but I had my leftovers lunch with me in my tote bag. I pulled out the container and offered it to him, saying

"Sir, did you eat today?" He declined, but thanked me as I urged him to take it. Then I put my lunch away and sat quietly, as did he. As we approached the Seneca Street station, I rose to take my leave.

He turned and asked me, "Where do you work?"

I answered, "Neighborhood Legal Services."

"Angels," he said, "You are all angels."

## NLS Good News!

Congratulations to Michelle Roy, Equal Justice Works Crime Victims Justice Corps Fellow at NLS, who was accepted to participate in the Leadership Buffalo Essentials program.

Through collaborations, community awareness, and civic engagement, Leadership Buffalo unites leaders to take action. The program will focus on increasing knowledge of the importance of community service, increasing problem solving skills, developing servant leadership skills (A servant leader leads by serving others, placing the interests and needs of others ahead of their own.), developing a better understanding of the diversity in our community, creating a more cohesive culture within their organization, and creating a more people focused culture.

The work of NLS will be enhanced by Michelle's participation in the program which is being fully funded by Lawley Insurance.

## Access to Benefits is a Continuing Struggle for NLS Clients

In August of 2016, "Justine" was living with her two daughters and an abusive domestic partner. One of her daughters is disabled due to congenital heart defects. Justine is also disabled and both she and her daughter receive SSI benefits. Justine and her children became homeless because of the abuse of her partner. Justine applied for emergency shelter with the Erie County Department of Social Services ("ECDSS"). ECDSS placed Justine and her daughters in a motel as a reasonable accommodation for their disabilities. Justine could not contribute to the cost of their emergency shelter because she had exhausted her resources for the month before applying for help.

ECDSS is required to provide people residing in motels with a restaurant allowance because motels do not provide meals and do not have cooking facilities. However, ECDSS refused to provide Justine and her daughters with the allowance. Public Benefits Attorney Diana Proske represented Justine at two separate administrative hearings. The resulting decisions directed ECDSS to provide the allowance but ECDSS refused to do so.

Diana filed an Article 78 petition for an order directing ECDSS to provide the allowance and directing the state Office of Temporary and Disability Assistance (OTDA) to enforce compliance with the decision, pursuant to the NYSSL.

After an initial hearing, the Judge directed OTDA to schedule yet another administrative hearing for Justine. The decision from that hearing found that ECDSS must provide a restaurant allowance as a cash payment directly to Justine. Diana then filed a motion to renew her original request for a decision stating that ECDSS was required to comply with the administrative hearing decisions and that OTDA was responsible for enforcing compliance.

The Judge ruled that (i) ECDSS was indeed required to provide the restaurant allowance as a cash payment; (ii) Justine was the prevailing party in this matter; (iii) the Respondents' positions were not substantially justified as defined by the Equal Access to Justice Act, and (iv) NLS is entitled to attorney's fees which will likely amount to \$8,000.

Diana showed grit and determination in seeing this matter through. Congratulations Diana!

# Litigation Update. . .

On January 28, NLS held its first litigation meeting.

Housing Attorney Brendan Anderson discussed an investigation that he and fellow attorney Katelyn Niedermier are pursuing. The Housing Unit regularly sees clients who have been denied apartments because that have security agreements from the Erie County Department of Social Services (ECDSS). Both the city of Buffalo and Erie County have fair housing ordinances designed to prevent source-of-income discrimination. While both the city and county ordinances contain provisions prohibiting source-of-income discrimination, the county ordinance goes further and specifically delineates that protected sources of income include security agreements. The Housing Unit is working with HOME (Housing Opportunities Made Equal) to arrange for testing of the properties where the landlord has engaged in such discrimination. If the proper case presents itself, the Housing Unit will file a “source-of-income” lawsuit in Erie County Supreme Court.

Housing Attorney Linda Detine and Public Benefits Attorney Diana Proske discussed an investigation they are pursuing. NLS regularly sees homeless clients who present at the Erie County Medical Center with psychiatric issues. ECMC discharges these clients with a cab ride to the Erie County Department of Services (ECDSS) for emergency assistance. Problems arise when, due to their psychiatric disabilities, clients are unable to navigate the ECDSS emergency assistance system and end up back on the street. Linda and Diane sent Freedom of Information (FOIL) requests to the Erie County Medical Center, and the Erie County Departments of Social Services and Mental Health seeking information on their policies and practices with respect to accommodating these clients. Linda and Diana met with Erie County Medical Center staff to begin a dialogue. They will likely meet with the Erie County Departments of Social Services and Mental Health to see if this problem can be worked out short of litigation.

- Jim Morrissey

## Have a Story to Share?

Email your story to  
Jim Morrissey at  
[jmorrissey@nls.org](mailto:jmorrissey@nls.org)

## GIVING HELP GIVING HOPE

The mission of Neighborhood Legal Services, Inc. is to provide a full range of free civil legal representation to low income and disabled people residing in Erie, Niagara, Orleans, Genesee, and Wyoming Counties, in matters involving their financial security and the legal rights which affect the stability of families and individuals. Our goal is to create the greatest access to the justice system for those low-income and disabled people without the means to pursue their rights. Our mission also includes providing outreach and training services to underprivileged populations and the community agencies which serve them.