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Don't Evict Victims; Domestic Violence

Vivian Berger, Special to the *National Law Journal*

On April 18, the Women's Rights Project of the American Civil Liberties Union, co-counsel with Vermont Legal Aid, announced settlement in *Bouley v. Young-Sabourin* (D. Vt. 2005), the first case in which a court had held that the Fair Housing Act bans discrimination against victims of domestic violence. Previous lawsuits had settled before resolution of this claim. The ruling, denying summary judgment to a landlady who allegedly evicted a young mother because her husband had physically attacked her in their home, amounts to a significant victory for women battered by their intimate partners.

Although the media have made Americans generally aware of the problem of domestic violence, many people do not realize that its negative effects extend beyond the physical and emotional damage to its targets-almost nine out of 10 of whom are female, according to the U.S. Department of Justice. When violence erupts within the home, these women stand to lose their housing or even custody of their children; when it spills over into the workplace, their bosses may fire them.

Eviction of the battered tenant poses a particularly serious problem. According to statistics released by the Women's Rights Project, domestic violence is a major contributor to homelessness of women and children. In 2003, for example, one out of three homeless women had been brought to this pass by domestic violence. The abuse itself will often cause the victim to flee. But if the victim manages to "evict" her abuser – Quinn Bouley obtained a restraining order against her husband and succeeded in having him sent to prison – she should not be expelled to the streets because of his attack on her.

The *Bouley* case merits attention not only because of its landmark holding, but also because of the legal argument advanced on behalf of the suing tenant. Other challenges under the Fair Housing Act had relied on disparate impact theory: Because "one-strike" or "zero-tolerance" rules against household violence disproportionately burden females, its primary objects, they amount to gender discrimination. This approach does not lend itself well to suits against owners of small properties like Bouley's landlady.

Negative stereotyping

Thus, Bouley's attorneys took the rather novel tack of claiming that the owner and her managing agent had subjected Bouley to disparate treatment based on negative stereotypes pertaining to

battered women. These include the notions that such women could leave if they really wished to, that they provoke their own mistreatment, that a wife must put her husband's and children's needs first, and that angry or competent complainants, or ones who are not bloodied or fractured, do not constitute "real" victims. Among other things, the agent (whose views the landlady credited) "delegitimized" Bouley because Bouley did not appear "in shock" or concerned about her husband, expressed an intent to get divorced, behaved assertively and had received other men's attentions. The owner, in turn, with whom Bouley had had an angry exchange – allegedly, on account of the former's inquiries about the latter's religion – concluded that Bouley had not acted "normal [sic] for a woman who had been victimized."

Such attitudes place the abused tenant in a Catch-22 situation. If she defends herself sufficiently to avert major injury and pursues her pursuer in court, she may elicit blame, not sympathy, and be tossed out of her apartment to boot – for "causing" the problem. If she suffers passively, however, she risks not only further assault, but also eviction on a different ground: the owner's fear that family violence will continue to occur.

Poor women, who experience higher levels of domestic abuse than their wealthier sisters, have also been harmed by federal law that allows a resident to be evicted from public housing when any household member engages in violence. Some local authorities have used their discretion to evict battered women on this basis. Whether such policies could withstand Fair Housing Act or other legal challenge is uncertain.

Of course, targets of spousal attacks have no monopoly on housing rights: A landlord owes all tenants quiet enjoyment of the premises, and leases typically so provide. But the problems presented by domestic disturbances must receive case-sensitive treatment. "Zero tolerance" – for the victim – is neither just nor necessary. Owners should evict the guilty party; if need be, they may also bar him from the property.

Rhode Island and Washington have passed statutes preventing landlords from discriminating against a tenant who has suffered from domestic violence. Other states, one hopes, will shortly follow in their footsteps.

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