

NEWS BRIEFS

Framingham settles with non-profit agency

By Phillip Bantz

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The town of Framingham and its insurer recently settled a controversial three-year lawsuit with the South Middlesex Opportunity Council.

SMOC, a non-profit social services agency that provides residential treatment to drug addicts, the homeless and others who are deemed at risk, will receive \$1 million from the town's insurer. The settlement follows a lengthy decision from U.S. District Court Judge Douglas P. Woodlock that allowed SMOC's suit to survive summary judgment but also urged alternative dispute resolution.

SMOC had accused Framingham's Board of Selectmen along with members of its Planning Board and Town Meeting of illegally manipulating zoning laws and creating delays in an attempt to stymie the expansion of a group home. The town said the agency had no evidence to support its allegations.

As part of the settlement, the town agreed to follow federal and state laws that protect the rights of the disabled in future permitting matters, and to train its municipal officials on the rights of the disabled under federal anti-discrimination laws. SMOC employees must also receive training on compliance with CORI law affecting the agency's programs.

"We consider this to be a huge victory for people with disabilities," said SMOC attorney Heidi A. Nadel of Todd & Weld in Boston. Her co-counsel, Howard Cooper, added that the settlement shows "there is no room for discrimination, no matter how loud people are screaming, 'Not in my backyard.'"

John J. Davis of Boston's Pierce, Davis & Peritano represented several town officials named in the SMOC suit. He said the settlement was the result of the town's insurer making a business decision.

"In the end, the insurer was contemplating a future trial in this case and wanted to end the future expenditure of fees," he said. "The insurer made a decision and the town gave consent."

The town and its insurer spent hundreds of thousands of dollars in the legal battle with SMOC, which had offered a non-monetary settlement agreement that called for the establishment of a joint commission to look at the discrimination allegations, according to Cooper.

"The town refused to take the hand it was extended, and then Judge Woodlock's decision ensued and you see the results," he said. "The failure to take that extended hand was truly unfortunate."

The initial offer also called for judicial oversight of the town's governmental process, which the town adamantly opposed, Davis said. He said town officials are "very satisfied" that the settlement does not call for such oversight.

"From our perspective, the town officials stood up for something they thought was very important, and they did not have to yield on those principles," he said.

The settlement also requires SMOC to make yearly reports to the town about its annual and three-year plans, including a summary of the programs operating in town and an assessment of future programs it intends to propose in the town. SMOC must also meet semi-annually with the town to discuss plans and answer questions.

"This was often a case about communication between parties," Davis said. "This gives us a solid mechanism to have better and more open

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— SMOC attorney Heidi A. Nadel



communications between SMOC and town officials."

Meanwhile, Cooper said the settlement is a "landmark civil rights case for the disabled" that "provides a learning opportunity for public officials that make decisions about non-profit programs for the disabled in our communities."

The 100-page decision that Woodlock issued in the case in early September apparently played a significant role in the settlement that followed. In the decision, Woodlock found evidence that indicated the town and some officials named in the suit had delayed SMOC's projects based on "the nature of the projects and their residents."

"If established, the evidence may ultimately demonstrate that certain defendants, through abusive communications and improper efforts to manipulate the municipal permitting process, unlawfully violated the detailed legal constraints fashioned to assure that prejudice within a community not impede access to housing and related programs for those suffering from recognized disabilities such as alcoholism and addiction," the judge wrote.

The day after he read Woodlock's decision, Cooper said, he contacted Davis to discuss mediation and, about two weeks later, an informal settlement agreement was reached.

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