

Who's discriminating against whom?

Elderly landlord assaults young male tenant...?

No evidence.

Many inconsistencies.

But investigator won't close the case until landlord pays tenant \$5,000.

Agency rules violated.

The tenant is a healthy 40-year-old African male in a rooming house on Bigelow Street in Cambridge, Massachusetts. His landlord is Lew McCauley, a 73-year-old bachelor with Alzheimer's, arthritis and a polio-weakened right arm.

The tenant was six months behind in rent, but this fact figures nowhere in the tenant's story. He says that landlord McCauley broke into his room, assaulted him, tried to rape him and slurred his race. The tenant filed a criminal complaint of assault and battery and a civil complaint of racial discrimination and sexual harassment.

The trial judge dismissed the criminal case and sharply rebuked the tenant to stay away from the obviously disabled McCauley.

Sonia DeWitt, however, is still on the civil case after 180 days. She is a young investigator with the Cambridge Human Rights Commission, an anti-discrimination agency like many similar local and state agencies across the country.

DeWitt refuses to believe McCauley – that he was talking to the tenant in the hallway regarding six months of unpaid rent and followed the tenant into his room, where the tenant grabbed McCauley, pinned him down, and sat on him. Then the tenant called the police and said he would tell the police that McCauley attacked him.

Yet DeWitt has found not one shred of independent evidence to support the tenant's accusations that McCauley attacked him. But she refuses to close the case even after 180 days of fruitless investigation. She wants the landlord to pay the tenant \$5,000. Then she'll close the case.

Leaving the case open is a pressure tactic, but it violates

the agency's own rule to close cases after 100 days if enough evidence to charge a person isn't found. As both prosecutor and judge (as well as bending the 100-day rule to her own whims), DeWitt is using the unchecked power of her agency to serve her own anti-landlord bias.

What DeWitt manages to believe and overlook is rather amazing.

First, she accepts the tenant's account that the frail, 73-year-old McCauley "kicked" in the door to his room, "immediately punched" him in the face, pulled him onto the bed "by his pajama bottoms," fought with the tenant until the tenant "finally managed to subdue him" and call the police, continued to fight with the tenant until the police arrived (presumably five or ten minutes of continuous struggle), and pinned the tenant down when the police arrived so that the tenant had to "free himself" to answer the door.

This story DeWitt accepts, despite McCauley's physical appearance, which DeWitt can see with her own eyes. McCauley is extremely thin and small-boned, his right arm always dangles limply, and of course he's in his 70's. McCauley explained to DeWitt that childhood polio left his right arm with no muscle strength below the shoulder and is so weak that he uses his left hand to turn the ignition key in his car.

McCauley's physical infirmities make it impossible for him to assault and restrain the tenant as claimed.

Okay, so give DeWitt the benefit of the doubt. Maybe she thinks it's just a matter of "he said, he said." What independent, third-party evidence has she found to support the tenant's story?

The tenant claims he suffered two cuts on his face that were so bad that he was taken to the hospital by ambulance. The ambulance, however, didn't come to the rooming house.

Rather, the tenant "left the police at the scene" and somehow got an ambulance. The tenant, however, has produced no hospital or ambulance report. And investigator DeWitt has not demanded that the tenant produce such reports.

Meanwhile, the police report mentions two injuries to McCauley and says not one word about injuries to the tenant. That alone seriously questions the tenant's claim that he

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Decision
is expected
in June

U.S. Supreme Court hears IOLTA debate

SPOA was just a few elbow rubs away from the U.S. Supreme Court this past January 13 as Suffolk University law professor Charles Rounds, a friend of SPOA, sat in attendance while the nation's highest court heard oral arguments for and against the Texas IOLTA program.

IOLTA is the interest earned on deposits held by lawyers of behalf of their clients, and all 50 states except one use it as a major funding source for the nation's legal services programs.

Professor Rounds was not merely an observer, since his own affidavit was one of two anti-IOLTA affidavits submitted to the court.

Also attending was Lonnie Powers, head of the Massachusetts Legal Assistance Corporation, who has already said that any anti-IOLTA decision of the Supreme Court in this case would not apply to Massachusetts, suggesting further litigation would be necessary.

After the oral arguments, Professor Rounds said the outcome was "uncertain," with three of the nine justices appearing pro-IOLTA, three anti, and three uncertain. The Supreme Court's final decision is expected in June.

Rounds gave an analogy to explain the pro-IOLTA argument. If you have \$100 in rental income, Rounds explained, and \$200 in expenses, then your net income is zero (or less) — so the government claims it can take your rents.

Odd as it sounds, that is the argument behind the government keeping the interest earned on lawyers' trust accounts.

Individual accounts for all of a lawyers' clients deposits won't produce any interest, but pooling them into one IOLTA account reduces the expenses, which produces a net surplus of interest, which the government takes.

The question before the Supreme Court is whether the rule that "interest follows principal" applies to *gross* interest (before expenses) or *net* interest.

The pro-IOLTA attorneys admitted, however, that IOLTA is voluntary, even though most attorneys consider it mandatory and fear disbarment. Last year, SPOA sponsored a bill in the Massachusetts legislature to make it clear to attorneys and their clients that IOLTA is voluntary. The legislation would have required lawyers to disclose the voluntary nature of IOLTA to their clients. The Massachusetts Bar Association opposed the bill, as also the chief justice of the Massachusetts Supreme Judicial Court in a personal letter.

From our mailbag:

"I'm not a landlord but as I've said before — you're on the side of right and justice. Keep up the good work. We all benefit when property rights are upheld and protected."

Landlord assaults tenant...?

continued from first page

needed to go to the hospital in an ambulance. Moreover, the police report mentions nothing about damage to the door. The tenant claims damage; McCauley says there is none. So maybe the police missed it. But surely DeWitt, if she were intent on the truth, could have (but hasn't) gone to the rooming house and verified for herself whether there was or was not any damage to the door consistent with a break-in.

The tenant also claims he went to the local police station and filed a complaint of attempted rape. But that complaint, he says, was "destroyed and replaced" by a police report. Doesn't this sound like: "I did my homework but the dog ate it" — ? Here the tenant's credibility completely breaks down. Why ever would the police "destroy and replace" a report?

Finally, the tenant also claims he called police at the Massachusetts Institute of Technology as well as the city police. McCauley told DeWitt that the MIT police have no record of any such phone call. DeWitt doesn't accept this or verify it for herself.

At least six claims of the tenant — facial cuts, door damage,

ambulance ride, hospital visit, tenant's police report, and tenant's call to MIT police — are unsubstantiated or contradicted by third-party evidence that DeWitt ignores.

What does DeWitt do instead? She has been trying to get testimony from other tenants in McCauley's building that would support the tenant's story. So far she has come up empty-handed. None of McCauley's other tenants in the building will confirm the incident or any pattern of aggression by him.

Still DeWitt won't close her hopeless case. Her anti-landlord agenda drives this case, keeping it open past the 100-day limit, pushing this sick elderly landlord to pay \$5,000 to the tenant, ignoring McCauley's advancing Alzheimer's disease, which interferes with his ability to rent his rooms, his sole source of income. Half the rooms are empty, he can't remember who's paid the rent, he can't remember where the keys are or which key is for which room. He can't even remember the last sentence he spoke, let alone the last time he ate.

Who is being discriminated against here? Certainly not the tenant. McCauley is the one who truly needs help.

TO: Cambridge City Council

FROM: Lenore Schloming
President
Small Property Owners Association

I bring the attached article to your attention, as I believe the egregious nature of the case may require your review and possible action.

2/12/98

98 FEB 12 PM 2:09
RECEIVED BY
CAMBRIDGE MA
CITY CLERK

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Consent Communication #9

1045

Communication was received from Lenore Schloming, President, Small Property Owners Association, regarding a situation between a landlord and tenant.

In City Council February 23, 1998

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