

Testimony of The Legal Aid Society

on

PROPOSED CHANGES TO TITLE 31 OF THE
RULES OF THE CITY OF NEW YORK
REGARDING ILLEGAL BOARDING HOUSES

Presented before

**The New York City Department of Homeless
Services**

Presented by:

Joshua Goldfein, Staff Attorney
The Legal Aid Society

JUNE 1, 2010

The Legal Aid Society welcomes this opportunity to testify before the New York City Department of Homeless Services (DHS) regarding proposed new rules to protect homeless clients of the Legal Aid Society from being placed by the City in dangerous illegal boarding houses.

The Legal Aid Society: The Legal Aid Society, the nation's oldest and largest not-for-profit legal services organization, is more than a law firm for clients who cannot afford to pay for counsel. It is an indispensable component of the legal, social, and economic fabric of New York City – passionately advocating for low-income individuals and families across a variety of civil, criminal and juvenile rights matters, while also fighting for legal reform.

The Legal Aid Society has performed this role in City, State and federal courts since 1876. It does so by capitalizing on the diverse expertise, experience, and capabilities of 850 of the brightest legal minds. These 850 Legal Aid Society lawyers work with 600 social workers, investigators, paralegals and support and administrative staff. Through a network of borough, neighborhood, and courthouse offices in 25 locations in New York City, the Society provides comprehensive legal services in all five boroughs of New York City for clients who cannot afford to pay for private counsel.

The Society's legal program operates three major practices — Civil, Criminal and Juvenile Rights — and receives volunteer help from law firms, corporate law departments and expert consultants that is coordinated by the Society's Pro Bono program. With its annual caseload of more than 300,000 legal matters, the Legal Aid Society takes on more cases for more clients than any other legal services organization in the United States. And it brings a depth and breadth of perspective that is unmatched in the legal profession.

The Legal Aid Society's unique value is an ability to go beyond any one case to create more equitable outcomes for individuals and broader, more powerful systemic change for society as a whole. In addition to the annual caseload of 300,000 individual cases and legal matters, the Society's law reform representation for clients benefits some 2 million low income families and individuals in New York City and the landmark rulings in many of these cases have a State-wide and national impact.

As you know, The Legal Aid Society provides legal assistance to homeless New Yorkers as well as homelessness prevention civil legal services through a contract with DHS. The Society is counsel to the Coalition for the Homeless in the Callahan and Eldredge litigation in which court orders require the provision of shelter to homeless men and homeless women. Since the early 1980s, the Society has also been counsel in McCain, Boston, and other litigation on behalf of homeless children and their families. We also represent tenants in all five boroughs through our housing practice.

Illegal Boarding Houses: We testify today in support of the proposed changes to Title 31 of the Rules of the City of New York which we hope will reform the City's past practice of referring, or permitting its contractors to refer, homeless single adults to illegal boarding houses,

also known as “three-quarter houses.” It is only a matter of time before a tragedy occurs at one of these dangerous and illegally overcrowded residences, which are being occupied by far more people than contemplated under the regulations of the City’s Department of Housing Preservation and Development, the Department of Buildings, and the Fire Department.

Not all of the residents of these illegal boarding houses come from shelter. Some come from hospitals, correctional facilities, and directly from the street. As a result, they may have been represented by lawyers in all three of Legal Aid’s practice areas. Many are disabled, in recovery, or suffering from acute or chronic health problems. They are likely to be vulnerable people coming from congregate care situations, and are often unequipped to advocate for themselves to enforce legal requirements with regard to their housing. If they were placed in adult care facilities, the State’s regulatory scheme would protect them. But these illegal boarding houses are by definition unregulated, unsupervised and uncounted. No one knows how many of them exist or how many people live in them, although in testimony today staff from Coalition for the Homeless describe their efforts to quantify the problem.

Last year, Ellen Davidson of Legal Aid’s Civil Law Reform Unit won a decision in the Appellate Division on behalf of the 12 residents of one of these buildings, the “AJ Family House” at 3323 Seymour Avenue in the Bronx. According to the City’s own records, this building is a two-story, two-family house with less than 2,500 square feet of living space. One of our clients in that case, who had been a shelter resident, described in an affidavit how he came to live there.

... I learned about the AJ Family House through my caseworker at [the shelter]. She gave me a letter telling me to be outside the shelter at a date and time certain because a van would arrive. When the day came, a week later, I was driven to the AJ Family House.

Our client goes on to describe the building:

... The basement has two rooms that each house one person. The basement has a kitchen, a bathroom and a separate entrance. The first floor has four rooms. There are about thirteen people living on the first floor. The first floor also has a kitchen and a bathroom. The second floor also has four rooms that house sixteen people. The second floor has a kitchen, bathroom, living room and a fire escape in one of the rooms.

I share a bathroom and a kitchen with roughly eleven other residents. I do not have a key to my room. It remains unlocked. There is an unlocked closet that my roommate and I share. I mostly keep my belongings in a suitcase and in my small dresser.

...

The conditions of the building are as follows: The boiler does not work consistently. There has been no heat since November. The owner has not been responsive to our complaints. Also, the radiators are not covered with steam caps and this causes water to leak all over the floor. The bathroom is often in disrepair as the toilet and sink are routinely clogged. The bathroom ceiling leaks occasionally. Everyone shares in the bathroom cleaning duties. There are some mice and roaches in the building. There is a terrible leak in the kitchen ceiling. ...

Bolder v. Livingston, Index No. 400163/08 (Supreme Court N.Y. Co.), Affidavit of Michael Bolder, sworn to January 22, 2009. The Court described what happened next:

... On December 26, 2007, the HPD inspector found six class B violations, including illegal conversion to a multiple dwelling, and directed that the premises be restored to lawful occupancy.

On January 3, 2008, HPD issued a vacate order to the owners, lessees and occupants of the building. The vacate order charged that the dwelling had conditions rendering it dangerous to life and unfit for human habitation, including an illegal apartment created in the basement and illegal rooming units and/or single room occupancies on the first and second floors. HPD directed the owner to provide an adequate supply of heat, seal up accessible openings in the cellar apartment, and to legalize the conversion from a private dwelling to multiple dwelling use, if legally feasible, or else restore to lawful occupancy. HPD also directed a fire watch for the entire building.

Smith v. Donovan, 61 A.D.3d 505, 878 N.Y.S.2d 675 (1st Dep't 2009), leave to appeal denied 13 N.Y.3d 712, 891 N.Y.S.2d 304 (2009).

The Coalition for the Homeless today offers testimony about its findings regarding how many of the illegal boarding houses it has uncovered which have subsequently been issued vacate orders by City agencies. It should not be incumbent on advocacy organizations, with their scarce resources, to identify which placements offered to homeless clients and other vulnerable individuals are lawful and safe, and which are unlawful and dangerous. Given the number of City agencies with responsibility for assessing the integrity and safety of the housing stock, the City is in the best position to make these determinations, and if it cannot confirm that a potential housing option is safe, it should not refer a homeless or otherwise vulnerable or impaired client there.

The proposed rule would require the City to live up to its obligations to ensure that vulnerable homeless adults are protected from dangerous living situations. It mandates that the City use the information already collected by City agencies to identify buildings that should not

be used as boarding houses. It would bar the City from referring homeless single adults to buildings that already have current, unresolved structural violations, or that have a history of such violations in the recent past. It would also bar the City from referring homeless single adults to buildings where their occupancy would violate the City's own occupancy standards. A pilot program for some shelters would go further and prevent referrals to buildings with pending complaints, to ensure that shelter residents are not placed in jeopardy merely because a landlord has managed to forestall access by City inspectors. This pilot should be fully implemented at all shelters as soon as possible to ensure that the City does not steer its most vulnerable adult clients to these dangerous, unlawful conditions.

Taken together, these two initiatives can ensure that the City makes the best use of its own resources by not sending vulnerable people to live in places the City already knows or suspects are not safe.

We appreciate the opportunity to testify before the New York City Department of Homeless Services.

Respectfully Submitted:

Joshua Goldfein
Staff Attorney
The Legal Aid Society
Homeless Rights Project
199 Water Street, 3rd Floor
New York, NY 10038
(212) 577-3414