

*Cohen v. Monroe County*, 17-15552, 2018 WL 4512751 (11th Cir. Sept. 20, 2018)

### **Waiving Local-Income Restrictive Covenants Deemed Unreasonable Request Under Fair Housing Act**

In *Cohen v. Monroe County*, Keith and Cheri Cohen (“the Cohens”) sued Monroe County under claims that the implementation of a deed restriction violated the federal and Florida Fair Housing Acts, 42 U.S.C. § 3604(F)(3)(B) (“the FHA”) and Fla. Stat. § 760.23(9)(b) respectively. Monroe County claimed that their restrictive deed did not violate either the FHA or the Florida Fair Housing Act because the Cohens requested an accommodation that was not reasonable or necessary to afford the Cohens equal opportunity to use and enjoy a dwelling.

In order to provide affordable housing in areas within close proximity to places of employment, Monroe County amended its Land Development Code to allow for “incentives to owners who restrict the use of an affordable housing dwelling unit designed for employee housing to households that derive at least 70 percent of their household income from gainful employment in the county.” The Cohens sought to purchase property but wanted a waiver to avoid the local-income restrictive covenant on the grounds that Monroe County failed to provide them a reasonable accommodation under the FHA. Although this waiver was denied, the Cohens still purchased the property and claimed they would rent it out to employees of Monroe County.

An FHA plaintiff must prove that (1) he is disabled within the meaning of the FHA, (2) he requested a reasonable accommodation, (3) the requested accommodation was necessary to afford him an opportunity to use and enjoy his dwelling, and (4) the defendant refused to make the accommodation. An accommodation is considered unreasonable if it imposes undue administrative burdens on the defendant or requires a fundamental alteration in the nature of the program.

The district court held that Monroe County did not violate the FHA and that the accommodation request was not reasonable. On appeal, the Eleventh Circuit affirmed the district court’s decision and held that if Monroe County were to waive the local-income restrictions for the Cohens and other market-rate housing units, then less housing would be available for people working in Monroe County, thus defeating the purpose of the deed restriction and eliminating an “essential aspect of the relevant activity.” Therefore, the Eleventh Circuit ordered the Cohens to sell the home to someone who met the local-income restriction.