

Hogan Helps Land Housing Discrimination Win In New York

By [Andrew McIntyre](#)

Law360, Minneapolis (September 29, 2017, 12:09 PM EDT) -- A federal judge recently ruled that the village of Garden City, New York, had intentionally engaged in racial discrimination when in 2004 it attempted to change to a zoning plan that wouldn't have allowed for affordable housing, a victory [Hogan Lovells US LLP](#) helped its client MHANY Management Inc. reach following more than a decade of pro bono work on the case. Lawyers at Hogan Lovells who have worked on the matter told Law360 in a recent interview that they hope the decision in the Eastern District of New York will have spillover effects in other parts of the country, and will provide clarity on how the Fair Housing Act applies in such scenarios.

The case represents just one small piece of a broad pro bono outreach Hogan Lovells has built over the years, a program that's now run by a full-time partner at the law firm.

"The firm has been doing this pro bono for 12-plus years. It's been a major pro bono effort. Dozens of lawyers have worked on it. It's been a great opportunity for younger lawyers here to get experience," said Hogan's Ben Fleming, who worked on the case.

The Eastern District case has a long history, and represents more than a decade of pro bono work on the part of the law firm.

It came about when Nassau County in 2004 decided to sell some of its land to the village of Garden City. As part of the potential sale process, the land had to be rezoned, and a long study ensued with consultants coming in to try to determine just how the land should be rezoned.

Following that process, Garden City concluded that the land should be zoned in a way that could support more than 300 units of affordable housing. But as residents in Garden City started hearing that there might be affordable housing, they let their voices against the idea be heard, Stan Brown of Hogan Lovells said.

"As a result, people started hearing that there's a possibility that affordable housing can be built. Residents of Garden City basically got up in arms," Brown said. "Then they decided they wouldn't zone it R-M, and made up a new zone: R-T zoning. That zoning effectively stripped the possibility of affordable housing being built in Garden City."

And so Hogan Lovells' team subsequently brought claims that the initial decision was discriminatory, and particularly discriminated against blacks and Latinos.

That litigation played out over the course of nearly a decade, and Hogan's team [won a victory](#) in the case in 2014 in the Eastern District, but the case and work didn't stop there.

The most recent work on the case has largely involved convincing the court that the actions of the city are discriminatory under a new set of HUD rules. And the burden had been on the plaintiffs to prove that discrimination still exists within the framework of the new HUD rules.

"The trial court hadn't analyzed [the matter] under the new HUD rules," Brown said. "That was the issue that was remanded back to the trial court."

Essentially, under the new HUD rules, the plaintiffs had to prove that there was an alternative to Garden City's proposed zoning that would have less of a discriminatory effect.

And for that, they went back to the very beginning, highlighting the initial zoning plan Garden City had backed before its residents expressed concern.

"What we showed was the R-M zoning, the originally proposed zoning, had a less discriminatory effect. That's what we had to prove," Brown said. "The court now has affirmed that under the new HUD rule, that we had met our burden of showing discriminatory impact."

Garden City had cited issues related to traffic and schools in its making its case to not zone in a way that would have allowed for affordable housing.

"The district court pushed back on Garden City's attempts to read the HUD standard, the HUD rule, very narrowly," Fleming said. "One thing Garden City argued in the latest round is that we could not prevail ... unless we could show that that alternative was equally effective at fulfilling what the government's interest was."

The case in the Eastern District is one of many Hogan Lovells has taken on a pro bono basis.

The firm, which was named a [pro bono firm of 2015](#) by Law360, does pro bono work across the country in areas such as civil rights, voting rights and even environmental matters.

And it even has a full-time partner, T. Clark Weymouth, who coordinates the pro bono program.

As far as the latest decision goes, lawyers at Hogan Lovells who worked on it hope it will provide a template for other cases across the country, as housing remains tight and cities find they need more affordable housing.

"The court's decision presents a road map," Brown said.

"When we took this ... we knew it was going to be an important case. We didn't know it was going to go on this long. I'm proud of the firm. We've stuck with it all these years. We've been up and down in the courts," Brown added.

The plaintiffs are represented by Stanley J. Brown, Peter J. Dennin, Chava Brandriss, Andrew J. Sein, Sarah J. Gregory, Benjamin A. Fleming, and Carol H. Cheng of Hogan Lovells US LLP; Frederick K. Brewington of the [Law Offices of Frederick K. Brewington](#); and Joseph D. Rich, Linda H. Mullenbach and Abigail E. Shafroth of the [Lawyers' Committee for Civil Rights](#).

The defendants are represented by James G. Ryan, Ariel E. Ronneburger, Thomas B. Wassel, Cynthia Ann Augello, Douglas J. Bohn and Jennifer A. McLaughlin of [Cullen and Dykman LLP](#) and by Michael A. Carvin of [Jones Day](#).

The case is MHANY Management Inc. v. Village of Garden City, case number No. 05-CV-2301, in the U.S. District Court for the Eastern District of New York.

Pro Bono Spotlight is a recurring Law360 series profiling law firm pro bono efforts.

--Additional reporting by Andrew Strickler. Editing by Rebecca Flanagan and Emily Kokoll.

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