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ADA CASES CAN BE WON

JMBM Helps Hotel Owner Beat the Shakedown

by Martin H. Orlick

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In an important case for the hospitality industry, JMBM attorney Martin (Marty) Orlick, along with insurance defense counsel, helped a Santa Barbara hotel avoid paying plaintiffs' attorneys' fees and costs in a lawsuit filed against it under the Americans With Disabilities Act (ADA).

In a recent trial court decision, U.S. District Judge Dale Fischer denied the plaintiff's motion to recover \$360,000 in attorney's fees and costs in the case against the hotel.

The Court determined it had no authority to award attorney's fees because the plaintiff failed to meet the burden of establishing "Article III standing," a necessary requirement to achieve Federal Court jurisdiction. According to the Court, standing was not established because the plaintiff failed to prove she had concrete plans to return to the hotel at the time she filed her complaint and therefore faced no actual or imminent injury.

Marty Orlick has defended more than 175 ADA lawsuits, many of them for hotels and restaurants. In a number of his cases, courts

have substantially reduced plaintiffs' attorneys' fees and in some instances the formula used to determine fees as been given a "negative multiplier."

"Courts are concerned about how the ADA is implemented through the legal system," says Orlick. "But few ADA cases go trial to where courts can set these kinds of precedents." He adds that the specter of paying plaintiffs' attorney's fees is often the reason that those sued under the ADA decide to settle instead of having their day in court.

The case against this hotel is one of the few cases addressing ADA standing requirements in California. "The decision dealt a sharp blow to professional ADA plaintiffs and their lawyers," says James O. Abrams, President and CEO of the California Hotel & Lodging Association. "More importantly, however," he adds, "it proves to lodging establishments and other businesses that ADA cases can in fact be defended successfully, and it shows exactly how to win them."



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