

## THE 2019 CLAY AWARDS

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### MUNICIPAL LAW

# Writing the legal blueprint for cities as it relates to sober-living homes



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NOT PICTURED: SHAUN HOTING Keller/Anderle LLP

Thomas Kurtz

## *Yellowstone Women's Stephouse et al. v. City of Costa Mesa*

In defeating a lawsuit over Costa Mesa's ordinance regarding sober-living homes, Keller/Anderle LLP attorneys argued the city was helping addicts by regulating businesses that sought to exploit them. And by persuading jurors to uphold it, Jennifer L. Keller and Chase A. Scolnick wrote a legal blueprint for other cities faced with the same dangerous conditions that neighbors say plagued the homes in Costa Mesa.

"The ordinance did more to protect the rights of the disabled than anything the plaintiffs did," Scolnick said. "Regardless of what the city did, the plaintiffs were going to oppose it, and they were going to claim it was discrimination."

The Costa Mesa City Council hired Keller/

Anderle in early 2018 to defend before a jury an ordinance that implemented permits for sober-living homes, prohibited them from being within 650 feet of one another and restricted the number of residents to six.

Plaintiffs' attorney Isaac R. Zfaty of Zfaty Burns called the ordinance "discrimination at its finest" in his closing argument. He joined the case as a trial manager for Christopher A. Brancart of Brancart & Brancart and Washington D.C. sole practitioner Steven G. Polin, who are veterans of housing discrimination lawsuits nationwide. They sued in 2014 under federal housing laws, which classify people with drug addictions as a protected disabled class, and prohibit restrictions from be-

ing placed on their housing.

But the discrimination laws don't apply to sober-living home operators, and Scolnick and Keller's case focused on the problems operators brought to the city and to their residents. City officials needed to enact a law to address the public health and nuisance problems sober-living homes brought to family neighborhoods, they argued.

"The idea that the city was discriminating against recovering addicts and alcoholics was not true," Keller said. "It was a very good ordinance. The city was proud of it. It was well drafted, and it shows other cities they can do something similar and not have to worry about being extorted by sober-living home businesses."

Jurors heard testimony about people being recruited from out of state for their insurance payments, then being left with nowhere to go. They heard of young people passed out on lawns, vomiting in nearby driveways and "in some cases being exposed to drugs inside the sober-living homes," Scolnick said.

"It was really riveting testimony, and it painted a picture of a beleaguered population," Keller said. She said she'd like to see the [Americans with Disabilities Act and Federal Housing Administration] amended "in a way that will allow cities to enact meaningful regulation without being exposed to these kinds of lawsuits."

After four weeks of testimony before U.S. District Judge James V. Selna, the jury of five men and three women deliberated about five hours on Dec. 7 before concluding Costa Mesa didn't discriminate against the plaintiffs, Yellowstone Womens First Step House Inc., California Womens Recovery Inc. and Sober Living Network Inc.

Polin said the city "was able to convince the jury that they were justified what they were doing because of the horror stories that were being circulated about sober-living homes." He said they plan to appeal.

Polin also said they were hindered in instructions because of a previous ruling that the ordinance wasn't discriminatory, though Keller and Scolnick said the jury instructions and law heavily favored the plaintiffs. *Yellowstone Women's First Step House, Inc., et al. v. City of Costa Mesa*, 14CV-01852 (C.D. Cal., filed Nov. 20, 2014).

— Meghann M. Cuniff