

## Attorneys for disabled rape victim prove group home's parent corporation is liable

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*Selk v. Res-Care N.M., Inc.*, No. CV-2007-2379 (N.M., Bernalillo Co. Dist. Dec. 2, 2009).

Larry Selk was born with profound disabilities and had been institutionalized for most of his life. He couldn't talk, walk, or feed himself. But he could express emotion and choose tasks for himself from pictures.

When he was in his 30s, Selk's family entrusted him to the care of a group home operated by Res-Care New Mexico, Inc. (RCNM), and its parent company, Res-Care, Inc. (RCI). That trust proved to be misplaced when, at 42, Selk fell victim to a sexual assault committed by one of the home's employees.

He had been living at the facility for several years when 10 employees were fired after failing a drug test. Under pressure to staff the home, RCNM and RCI hired Thurman Williams without checking his references, which would have revealed that he had been fired from another group home for kissing a male resident.

During his first and only shift at the home, Williams was alone with Selk in his room with the door shut for up to an hour. About 12 hours later, two employees noticed red, bruise-like marks on Selk's neck while giving him a shower. They also noticed that he was agitated.

The employees notified their supervisor, who examined Selk and discovered a tear in his rectum. He was taken to the hospital, where a nurse found several bleeding lacerations and abrasions and confirmed that he had been penetrated. The shower had washed away any DNA evidence that might have been present on Selk's body.

Williams was fired, though his record indicated that he was fired for identity theft. The home denied for several years that Selk had been

raped. When Selk's sister and guardian, Rani Rubio, tried to get his medical records, the companies repeatedly told her to speak to their lawyers. With no other recourse, she turned to attorney Thomas Lilley of Roswell, New Mexico, who brought in Albuquerque lawyers Carl Bettinger and Gregory Chase.

Rubio, on Selk's behalf, sued RCNM and RCI, alleging they breached their duty to provide safe care by failing to properly screen, train, and supervise staff, which in turn led to the assault.

The attorneys needed to show that both RCNM and RCI operated and managed the home because RCNM had lost its contract with the state after repeated warnings and was no longer a viable entity. At trial, the attorneys produced multiple documents showing that RCI controlled everything from the facility's purchasing contracts to its utility bills and that all job offer letters came from RCI, not RCNM.

"On a gut, emotional level, we just kept asking RCI management, 'Do you think you have any responsibility for what happened at [the group home]?' and they repeatedly said no," Bettinger said. That answer "drew derisive glances and at times even outright laughter from the jurors."

Another obstacle was Williams's culpability, which RCI argued was an intervening cause. Selk's attorneys emphasized the defendants' failure to look into Williams's background.

"RCI was in charge of the henhouse, and they invited a fox into the henhouse, and the fox took a chicken. Now they want to blame the fox," Bettinger told the jury. "That isn't right because RCI was the one that promised to keep Larry safe, and they violated and betrayed that promise."

The defense tried to minimize Selk's injuries by arguing that his

disability prevented him from understanding what had happened, asking Rubio's sexual assault expert if animals can tell when they're being raped. Nurses testified, however, that for weeks after the assault, Selk was withdrawn and tearful.

In his closing argument, Bettinger did something he had never done before: He sang. There is a song by Sarah McLachlan that goes, "It's funny how we feel so much, but we cannot say a word. We are screaming inside but we cannot be heard." Bettinger told the jury that those words described Selk, saying he suffered in silence because he was unable to verbalize what happened. The defendants could not hear Selk's inner crying, Bettinger suggested to the jury, "but they can hear it from you."

The jury awarded the plaintiff \$54.15 million, including \$4.95 million in compensatory damages, to be apportioned at 65 percent to RCI, 30 percent to RCNM, and 5 percent to Williams. The jury's award included \$48 million in punitive damages against RCI and \$1.2 million in punitive damages against RCNM.

The trial court later reduced RCI's punitive damages to about \$9.65 million. Rubio plans to appeal.

Although the case is a lesson for parent corporations that they can't hide behind their local companies, the attorneys said it also sheds light on mistreatment of vulnerable people. "I think it's a sign that we as a society expect and demand that the most vulnerable among us be treated with respect and be cared for properly and appropriately," Chase said. "It's not an option; it's mandatory that we do that." ■

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