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## After Losing Discrimination Claim, Man Faces Investigation

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After a trial with several bizarre twists, a man who claimed Del Taco violated his disability rights has lost his suit seeking damages and may face criminal charges stemming from testimony during his civil trial that he was faking being handicapped.

The plaintiff, Patrick Madden, 49, is now under investigation for alleged fraud for receiving disability payments from the state.

An investigator for the California Department of Health and Human Services, Kerry Bernard, said evidence presented in the Sacramento County Superior Court trial may be turned over to the county district attorney's office. "If an individual in our program was deemed to be someone who was faking disability, we would ask the D.A. to file grand theft," she said.

Bernard said she opened her investigation after sitting in on Madden's weeklong trial that ended last Tuesday in an 11-1 verdict for Del Taco. Jurors agreed with the restaurant chain's attorneys that Madden was not disabled and rejected his claim for unspecified damages.

Madden's attorney, Robert Koehler of Sacramento's Hibbett, Tarbell & Koehler, said he will appeal the verdict on grounds that jurors overstepped their authority.

The true issue, Koehler said, was the cause of Madden's injuries and the size of the damages he deserved, not whether he was physically disabled. "The jury was off in the wild blue yonder pretending to be doctors," he said.

Koehler dismissed the criminal allegations as baseless. "My client is mentally retarded and collects Social Security for his disability."

Madden, who claimed to be wheelchair-bound with back injuries for the past 25 years, was seeking damages from Del Taco for injuries he said occurred because a cement trashcan blocked a ramp at a Sacramento Del Taco restaurant in August 2002. (*Patrick Madden v. Del Taco, Inc.*, #03AS04237, filed July 2003.)

Madden asserted that the heavy trashcan was blocking the wheelchair ramp in violation of his disability access rights and caused him to fall out of his chair.

Del Taco's lawyers said they initially saw the case as a losing battle but decided to go to trial and argue that Madden wasn't actually disabled at the time of the fall.

"It was a long shot," said lead co-counsel for Del Taco Scott Farrell at Call, Jensen & Farrell in Newport Beach, because a court of appeal had already decided that the restaurant was in violation of the Americans with Disabilities Act for just having the trashcan blocking the ramp. (*Madden v. Del Taco* 150 Ca AP 4th 294, filed April 25, 2007)

During the trial, Farrell presented a four-minute video taken by a private investigator five years after the incident that showed Madden walking about his house and, at one point, carrying a coffee table. The sub-rosa video also showed Madden walking several blocks, said a juror on the trial, who asked to remain anonymous.

Transcripts of the trial also show that Madden's former girlfriend, Connie Cook, testified that Madden pocketed the money the state gave him instead of spending it on an in-home care provider.

Cook also alleged that Madden regularly obtained extra pain medications from one of his doctors to sell illegally from his home.

When confronted with Cook's allegations of his dealing painkillers Vicodin and Norco, Madden pleaded the Fifth Amendment.

"I about fell out of my chair when he said that," Koehler said. "I wonder what law program he saw on TV that made him say that. I have no idea."

Koehler requested a sidebar and a recess and moved for a mistrial. Judge David Abbott refused on the grounds that though the jury had seen damaging testimony, it was pertinent to the case.

Minutes later, Madden withdrew his Fifth Amendment plea and denied that he had sold the drugs.

"With that, the tone and tenor of the trial began to change," Farrell said.

"The Fifth Amendment thing is what killed the jury," Koehler said.

In another bizarre twist, Madden stood up from his wheelchair and walked out of the courtroom during the testimony of his personal doctor, Sacramento spinal surgeon Dr. Elvert Nelson, whom Madden called to establish the merits of his injury claims.

Moments later, a woman in the hallway ducked her head into the courtroom and said, according to trial transcripts, "Excuse me, guy out here is having a seizure."

Nelson, who was the only doctor present, exited to attend to Madden. Paramedics arrived and took Madden from the courthouse to the hospital.

The following day Nelson took the stand and testified that the behavior of Madden "didn't look like a true seizure."

Nelson testified that the plaintiff never lost consciousness and was flapping his arms in a way that wasn't consistent with a seizure.

A fire department first responder who treated Madden described his movements as calm, synchronized motions of the arms and legs "like making snow angels."

In an unorthodox turnabout, Madden's lawyers paid Nelson a \$5,000 fee for his first day of testimony, and the defense's team paid him \$5,000 for the second.

In reaching its verdict, the jury deliberated for less than an hour.

Farrell said Del Taco intends to file a memorandum to recover \$30,000 in legal fees from Madden and another \$200,000 in fees allowed under the disabilities act.

He said he offered to waive the fees and charges in return for a dismissal of all pending claims and appeals from Madden.

Koehler expressed concern about Del Taco's approach of requiring a plaintiff to first prove that he is disabled to jury of lay people before showing that he deserves damages.

"It has a chilling effect on rights of the disabled," he said.

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