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Fair Housing Newsletter

Keeping you current on fair housing news and issues

LAW OFFICE OF
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Testers' Claims Dismissed

The United States District Court for the Eastern District of Missouri has dismissed two of three claims brought by a housing advocacy group. The reason – the non-profit advocacy group did not initiate the tests because of a complaint or because of any action by the management company. Thus, the non-profit group did not suffer damages and did not have standing to bring a claim.

The case arose out of three matched pair tests conducted by the Metropolitan St. Louis Equal Housing & Opportunity Council. The tests were all conducted on the same management company.

Test for Familial Status and Race Discrimination:

The first test was performed by an African American female who, in her role as a tester, indicted to the housing provider that she was married and was looking for a one-bedroom apartment for herself and her husband. She only spoke the housing provider on the phone and did not tell the person her race.

The second part of the first test was also performed by an African American female who, in her role as a tester, indicated to the housing provider that she was single and looking for a one-bedroom apartment for herself and her three-year old daughter. Again, the tester only spoke to the housing provider on the phone and did not tell the person her race.

The Council concluded that the test revealed both race and familial status discrimination. The discrimination included: refusing to make a one-bedroom unit available for inspection by two-person households with children while indicating a willingness to make the same unit available for inspection by a two-person household without children; informing testers who indicated they had children, that he would not rent to them because of the underwriting policy of his insurance company; and informing testers that if they had children, each child would have to have his or her own room because of the insurance. The Council based its race discrimination claim on the fact that one African American tester was denied housing.

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Note from the Editor: This newsletter is the first published since I left King & Ballow to start my own firm. If you find it helpful, please tell your friends. If you have any suggestions on topics for upcoming newsletters or webinars, please let me know.

In the News

Screening Criteria Cost Company $630,000

The U.S. Department of Housing and Urban Development has reached an agreement with a group of Illinois property owners and a management company to settle a claim they used applicant screen policies that prevented applicants with mental disabilities from living in a supportive living complex. The cost: $630,000. This case started after several disabled individuals were denied residency. As part of the agreement, the company has agreed to change its policies. However, it is not clear from the settlement agreement exactly what policies were considered discriminatory. One telling fact may be that the Company has promised it will not ask applicants about their disabilities or medications they may be taking during a tour of the facilities.

Refusal of Insurance May Violate Fair Housing Laws

The National Fair Housing Alliance has filed suit against Travelers Indemnity Co. because it has denied commercial building owners habitational insurance to multi-family housing where tenants pay rent with public vouchers. Habitational insurance is vital for multi-family housing because it covers tenant liability. The NFHA argues this rule causes management companies and owners to refuse to rent to residents who use vouchers. This, the NFHA argues, causes segregation.

Testers: Continued from page 1

Test for Race Discrimination:

The second test involved two male testers, one African American, and one White. The difference in the conversations between the management company and the two testers was that the housing provider allegedly asked the African American tester about his credit history but, did not ask the white tester about credit history. The test also revealed that the African American tester was asked about his current neighborhood and the housing provider stated that less-desirable types of people tend to live in the African American tester's current neighborhood. The Council determined there was race discrimination because one African American tester was denied housing.

Test for Familial Status:

The third test involved two female testers, one of who purportedly was single and had a four-year old child, and the second who purported was living with an adult boyfriend. The tester with the child told the housing provider she was interested in a one-bedroom apartment, but "would be willing to look at a two bedroom." Like the first test, the Council concluded that the third test revealed the same types of familial status discrimination.

Based on a finding of discrimination in all three tests, the Metropolitan St. Louis Equal Housing & Opportunity Council filed suit. As part of the suit, the Council alleged that persons were injured and the Council was forced to divert funds to counteract the discriminatory message and acts of the management company. The company requested the court dismiss the claims. It dismissed two of the three claims.

In its opinion, the court cited a U.S. Supreme Court case holding that the plaintiff must allege that it suffered a "distinct and palpable injury" in order to have standing to sue. The injuries must be "fairly traceable" to the management company's actions.

In this case, the court found that the Council had suffered no palpable injury in the first two tests. The first test was initiated without any complaint or any actions by the housing provider. However, when the first test revealed familial status discrimination, the Council then had evidence that the housing provider violated fair housing laws and suffered damages to conduct the third test. The second test was different. In the court's opinion, the first test had not revealed evidence of race discrimination. Therefore, the second race test was also initiated without a complaint or any evidence that the housing provider had discriminated against African Americans. In the first test, there was no way to determine either tester's race while talking to them on the telephone. The Council's conclusion that the first test revealed race discrimination was without merit. Additionally, because both testers in the first test were African American, the test was flawed. Only one African American tester was discriminated against - not both. This result showed a lack of discrimination as much as it shows discrimination. In the end, the court dismissed the first two tests and allowed the third test to remain.

We offer regular webinars on a variety of fair housing subjects.
Check out our website to find out more.
www.angelitafisherlaw.com

In the News

HUD Charges New York Co-Op with Refusing to Sell Unit to Disabled Person

The U.S. Department of Housing and Urban Development has charged a White Plains, New York, co-op with fair housing violations for refusing to grant an exception to its no-trust ownership policy. The case started when disabled man and his parents attempted to purchase a unit from the co-op. The disabled man's parents had created a supplemental needs irrevocable trust to provide for the man's care. The man, and his parents, attempted to buy the unit using the trust as the owner. The co-op rejected the application because the cooperative did not permit ownership by trust. The buyer asked for an exception to the policy and the co-op refused.

No Pet Policy Costs Management Co. $22,600

A San Diego management company has agreed to settle a claim filed with the U.S. Department of Housing and Urban Development alleging it failed to accommodate disabled residents by allowing assistance animals. The case arose after tests were conducted which allegedly showed that several apartment complexes routinely denied housing and reasonable accommodations to persons who required an assistance animal. The money will go to a non-profit fair housing advocacy organization based in South San Francisco, which was involved with the

Daughter May Bring Lawsuit on Behalf of Father

The U.S. District Court for the Middle District of Florida has held that a daughter may bring a lawsuit on behalf of herself and her late father after her father was denied an accommodation.

This case started when a Section 8 public housing resident was forced to move because the housing complex was being remodeled or demolished. As a result, he was placed in a third-floor one-bedroom apartment of a privately-owned, tax credit, multi-family development. After being diagnosed as legally blind, the resident's daughter and the resident requested he be moved to a two-bedroom unit on the first floor and be allowed a live-in aid. The housing provider refused. Why? Because they had determined he was not disabled.

Regardless of the written documents supplied by the doctor, the housing provider was relying on the fact that the resident had been denied SSI disability benefits in the past. When the resident told the housing provider that he was appealing that decision, the housing

provider told the resident they would reconsider their decision if the Social Security Administration changed their decision.

When the Social Security Administration reversed its decision and granted benefits, the resident again asked to be moved to a ground-floor unit. The housing provider again refused and told the resident and his daughter that they would need to start the accommodation process a new. Before the process could be initiated again, the resident fell and died from a head injury sustained during the fall. He was found dead in his kitchen.

The daughter filed a lawsuit on behalf of herself and her late father. The housing provider asked the court to dismiss the part of the lawsuit brought on behalf of the daughter herself. The court refused.

The Fair Housing Act extends a cause of action to all persons if they suffer an injury as a result of the housing provider's conduct. The daughter only needs to show that: she suffered an injury, there is a causal connection between her injury and the housing provider's allegedly unlawful conduct; and her injury will be redressed by a favorable decision. Here the daughter assisted her father in the exercise and enjoyment of his protected housing rights by making multiple requests for an accommodation and even filing a fair housing complaint on her father's behalf. Therefore, the daughter may sue.

In the News

Texas City pays $475,000 to Settle Fair Housing Claim

The city of Beaumont, Texas has agreed to pay $475,000 to settle allegations it discriminated against individuals with intellectual or developmental disabilities who are attempting to live in groups homes in residential areas. The city had imposed a one-half mile spacing rule to its zoning that effectively bared many small group homes.

Another Assistance Animal Charge

A new charge has been filed by the U.S. Department of Housing and Urban Development alleging a New York property owner and management company refused to allow an emotional support animal. The case started when a woman with a mental disability alleged the real estate company that owned the apartment building where she wanted to live, denied her request to keep an emotional support animal even though she provided a doctor's statement attesting to her need for the animal. The case will now be heard by a U.S. Administrative Law Judge unless either party choses to have the case heard by a federal judge.

Property Manager's Sexual Harassment Case Settled

The U.S. Department of Housing and Urban Development has settled a lawsuit alleging a South Dakota property manager sexually harassed a female tenant. Under the agreement, the management company will pay $24,600 to the harassed female, use a third-party to interact with tenants, attend fair housing training and adopt a written policy against sexual harassment.

U.S. Court of Appeals Agrees with HUD on Emotional Support Animals

The U.S. Court of Appeals for the First Circuit has upheld a Final Order of the Secretary of HUD following a trial before an administrative law judge where a condominium association was held to be in violation of the Fair Housing Act for refusing to allow an emotional support animal. The association has been ordered to pay $36,000.

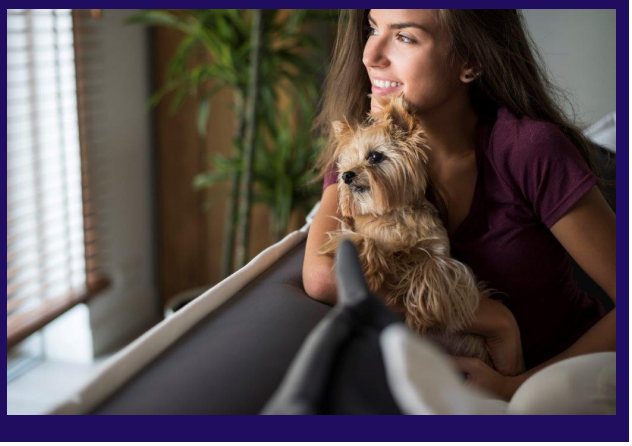
It all started with a man and a dog. The condominium association where the man lived had a "no-pet" policy. The association sent warning letters to the resident telling him that he would be fined unless he removed the dog from the unit. The resident responded by advising the board of directors that he was disabled due to anxiety and depression. He informed the board, in writing, that he intended to keep his emotional support dog and even provided a letter from his treating psychiatrist. The association did not budge. The man eventually was forced to move and sell his unit which had been his home for 15 years.

The man filed a complaint with the U.S. Department of Housing and Urban Development which found there was cause to believe the association had violated fair housing laws. A four-day evidentiary hearing followed in front of an administrative law judge. The judge found the association had violated the Fair Housing Act and ordered it to pay $3,000 in damages and $2,000 as a civil penalty. The HUD Secretary agreed with the decision but thought the damages were too low. The Secretary increased the damages to $20,000 and the civil penalty to $16,000.

The association appealed. The U.S. Court of Appeals for the First Circuit agreed with the Secretary that the association had violated the Fair Housing Act by not allowing the resident to keep an emotional support animal as an accommodation for his disability.

This case serves as a reminder that allowing an exception to the "no-pet" policy for residents with disabilities is a well-established rule for both HUD and federal courts. Housing providers may ask for documentation establishing the resident/applicant is disabled as defined by fair housing laws and that the animal is necessary because of the disability. Be careful - do not ask for too much medical information. You are not entitled to know a diagnosis or the severity of the disability.

Emotional Support Animals Do Not Always Look Like Service Animals



Inspections and Recertification were not Retaliation

The U.S. District Court for the Northern District of Indiana has held that a resident does not have a retaliation claim after she filed a fair housing complaint with the South Bend Human Rights Commission. It is not retaliatory to inspect an apartment or require the tenant to undergo the recertification process.

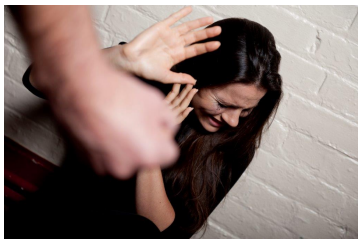
This case began with an argument that took place between the property manager and a resident. The property manager was allegedly asking the resident about custody matters involving the resident's son. The resident described the encounter as "malicious racial intimidations" and "coercion on matters of child custody." The property manager, who later apologized, stated she was only questioning the resident about her son because she needed to know if the resident still qualified for a two-bedroom unit or would need to be placed in a one-bedroom unit.

The resident filed a fair housing complaint alleging the property manager threatened and harassed her because of her race and familial status. The race claim was based on the fact that the resident was White and her male partner was African American. The familial status claim was based on the fact that the property manager was questioning the custody status of the resident's son.

Shortly after the fair housing complaint was filed, the property manager inspected the resident's apartment twice, but did not give her a bad evaluation. The property manager also initiated the resident's Section 8 recertification. When the resident asked that the recertification meeting be postponed, the property manager agreed and rescheduled the meeting. However, the resident did not show up for the rescheduled recertification meeting and the resident was evicted because she failed to recertify her eligibility for subsidized housing.

The resident sued claiming she was retaliated against after filing a fair housing complaint. The court disagreed and dismissed the lawsuit. The inspections did not support a claim of retaliation. Unit inspections are provided for by laws governing subsidized housing. One of the inspections resulted in a favorable evaluation while the other resulted in no evaluation at all. The recertification was not initiated in direct response to the complaint. It was not initiated prematurely or done in a punitive or prejudicial fashion. As such, there was no retaliation.

In sum, even when a resident files a fair housing complaint, the housing provider has rights. It can still inspect the apartment and require the resident to undergo the recertification process. If the resident refuses, the housing provider may evict without fear of running afoul of fair housing laws.



Domestic Violence Webinar

Wednesday, June 22, 2016
10:00 a.m - 11:00 a.m. CDT

$24.99

Domestic Violence is real and the housing consequences can sometimes be as devastating as the violence itself. As a landlord, you should know that refusing housing to a victim or evicting a victim of domestic violence may violate fair housing laws. Join us for this month's webinar where we will discuss:

- Disparate impact claims;
- Violence Against Women's Act;
- Documentation you may require; and
- Recognizing what information you may or may not consider.

Register at:
www.angelitafisherlaw.com/fair-housing.html