



Plaintiffs' application for a license to conduct business as a rental listing referral agent, which application was submitted to the Pennsylvania Real Estate Commission (the "Commission"). Specifically, Plaintiffs allege in their amended complaint that Defendant Brown, in his capacity as a prosecuting attorney for the Pennsylvania Bureau of Professional and Occupational Affairs, "coerced" two licensed real estate agents to withdraw their manager initial license applications which had been submitted in conjunction with RGI's rental listing referral agent's license application. Moreover, Plaintiffs allege in their amended complaint that when a third licensed agent, Plaintiff Lon Warner, refused to withdraw his managerial application, Defendant Brown retaliated against Plaintiffs by filing an Order to Show Cause with the Commission, and filing a protest to RGI's license application, charging that RGI had been unlawfully conducting business as a rental listing referral agent without a license.

Defendant Brown initially filed a motion to dismiss Plaintiff's amended complaint pursuant to Fed.R.Civ.P. 12(b)(6) on the ground that Plaintiffs had failed to state a claim upon which relief could be granted. The Court granted Defendant's motion in part and denied the motion in part. The Court dismissed Plaintiff's amended complaint insofar as it alleged a violation of procedural due process. Additionally, the Court dismissed Plaintiff's amended complaint insofar as it alleged a violation of substantive due process in connection with Defendant's filing of an Order to Show Cause and filing of a

protest against RGI in the Commission, finding that Defendant had absolute immunity with respect to those actions. However, the Court denied Defendant's motion to dismiss insofar as Plaintiffs' amended complaint alleged a violation of substantive due process in connection with Defendant's alleged coercive conduct toward the three licensed real estate agents who had filed managerial applications on behalf of RGI. Following a period of discovery, the parties filed these summary judgment motions, which address the sole issue in the case-- whether Defendant Brown violated Plaintiffs' substantive due process rights by coercing or attempting to coerce the three licensed real estate agents who had submitted managerial applications on behalf of RGI.

The facts as to which there are no disputed issues, as disclosed by the exhibits submitted in connection with these motions for summary judgment, are summarized as follows:

On September 21, 1995, RGI submitted to the Pennsylvania Real Estate Commission an application for the issuance of a license to conduct business as a rental listing referral agent. A "rental listing referral agent" is defined by the Pennsylvania Real Estate Licensing and Registration Act (the "Act") as "any person who owns or manages a business which collects rental information for the purpose of referring prospective tenants to rental units or locations of such units." 63 P.S. § 455.201. In order to obtain a rental listing referral agent's license from the Commission, an applicant must satisfy specific qualifications

which are set forth in the Act. See, 63 P.S. §§ 455.521-522, 455.561. Moreover, the Act provides that "[l]icenses shall be granted only to and renewed only for persons who bear a good reputation for honesty, trustworthiness, integrity and competence to transact the business of ... rental listing referral agent, in such manner as to safeguard the interest of the public, and only after satisfactory proof of such qualifications has been presented to the commission as it shall by regulation require." 63 P.S. § 455.501(a). The Act explicitly prohibits conducting the business of a rental listing referral agent without first being licensed by the Commission. 63 P.S. §§ 455.301-305.

Plaintiff Frederick Royer was listed on RGI's application as the President of RGI. Nancy S. Carbaugh, a licensed real estate salesperson, was listed on the application as the RGI's Proposed Manager and had signed a manager initial license application which was submitted in conjunction with RGI's license application.

While RGI's application was pending, Defendant Brown was contacted by Bruce Mayes, an investigator for the Pennsylvania Real Estate Commission. Investigator Mayes informed Defendant Brown that RGI had submitted a rental listing referral agent's license application, and that Frederick Royer was listed on that application as the President of RGI. Earlier in 1995, Defendant Brown had begun prosecuting another rental listing referral agency, Renters Realty, Inc., which had been headed by Frederick Royer. The prosecution against Royer and Renters Realty arose

from allegations that Renters Realty had been using the managerial licenses of real estate agents who did not actually work at Renters Realty or had no management or supervisory duties there. Eventually, the Commission fined Renters Realty, and revoked its rental listing referral agent's license.

At the time he was contacted by Investigator Mayes in connection with RGI's license application, Defendant Brown was still involved in prosecuting Renters Realty. Investigator Mayes informed Defendant Brown that, in addition to listing Fred Royer as its President, the RGI license application listed its office address at the same address where Renters Realty had been located. Moreover, Investigator Mayes informed Brown that Nancy Carbaugh, the licensed real estate agent listed as the manager of record on RGI's license application had worked at RGI for only one week and was now employed at a different rental agency.

On November 27, 1995, Defendant Brown telephoned Ms. Carbaugh, and informed her that her application to serve as manager of record for RGI was still on file, and that her certificate was still hanging in the RGI office. Defendant Brown informed Ms. Carbaugh that if she was no longer going to be the manager of record for RGI she must withdraw her application. On that day, Ms. Carbaugh withdrew her application for manager of record for RGI.

In testimony given at the administrative hearing held in connection with the Order to Show Cause filed against RGI, Ms. Carbaugh stated that she had left her employment with RGI

approximately two months before she was contacted by Defendant Brown because she had learned from a third party that RGI was under investigation. According to her testimony, Ms. Carbaugh felt frightened after speaking with Defendant Brown because she did not want to lose her real estate license. However, Ms. Carbaugh testified that she did not feel intimidated by Defendant Brown, and did not feel that Defendant Brown was coercing her to withdraw her application as manager of record for RGI.

On December 15, 1995, Lori James submitted a manager initial license application on behalf of RGI. According to her testimony at the administrative hearing, Ms. James had graduated from real estate school approximately two weeks before she sent in the managerial application on behalf of RGI. When notified by the licensing bureau of Ms. James' application, Defendant Brown contacted Ms. James by phone. According to Ms. James' testimony at the administrative hearing, Defendant Brown told Ms. James that he did not feel sure that Ms. James understood her responsibilities as a manager of record for RGI. Defendant Brown also told her of the charges filed against RGI President Frederick Royer in connection with Renters Realty. According to Ms. James' testimony, Defendant Brown told her that, as RGI's manager of record, Ms. James would be responsible for anything that went wrong at RGI, and could be personally fined. Approximately one week after he telephoned her, Defendant Brown sent Ms. James a letter in which he again stated that Ms. James would be fined if she was the manager of record for RGI and RGI

was found to have committed unlawful acts. Defendant Brown also sent Ms. James a copy of the Commission's regulations. In his letter, Defendant Brown instructed Ms. James to read those regulations and consider whether she could abide by them as RGI's manager of record. Defendant Brown further stated that he would not process Ms. James' managerial application on behalf of RGI until she stated in writing what her daily responsibilities would be at RGI. On January 11, 1996, Ms. James withdrew her managerial application.

On January 19, 1996, Plaintiff Lon Warner submitted a manager initial license application on behalf of RGI. Soon thereafter, Defendant Brown contacted Plaintiff Warner by phone. According to Plaintiff Warner's testimony at the administrative hearing, Defendant Brown introduced himself and said that he was calling to make sure that Warner understood his obligations as manager of record for a rental listing referral agent. Defendant Brown told Warner of the charges against Renters Realty and the hearings which had been held in connection with those charges. According to Warner's testimony at the administrative hearing, Defendant Brown told Warner that he should write a letter stating that he understood the responsibilities as a manager of record and was willing to follow through with them, or should withdraw his application. According to Warner's testimony, Defendant Brown's phone call caused concern because Warner did not want to get in trouble with the Commission. Warner further testified that he asked Brown to send him a copy of the Commission's

regulations. Brown sent a copy of the regulations to Warner and included a letter in which Brown stated that he did not think that Warner understood the extent of his responsibilities as a manager of record. Brown further stated that there would be "dire consequences" if Warner failed to fulfill his responsibilities as the RGI manager of record.

According to Warner's testimony, Warner requested an in-person meeting with Brown after he reviewed the regulations. In February, 1996, Defendant Brown met with Mr. Warner and Mr. Royer. On March 1, 1996, Mr. Warner sent Defendant Brown a letter stating that "as a result of our conversation, I now have a greater understanding of the role of Manager of a Rental Referral Agency." The letter further requested that Defendant Brown process Warner's managerial application which was submitted on behalf of RGI.

On March 15, 1996, Defendant Brown filed an Order to Show Cause before the Commission charging that Plaintiffs' were unlawfully conducting business as a rental listing referral agent without a license. Defendant Brown also filed a protest against the pending license application of RGI. On August 27 and August 28, 1996, the Commission held a hearing on these charges. On October 10, 1997, the Commission's Chief Hearing Examiner issued a Proposed Adjudication and Order finding that Plaintiffs were subject to discipline under 63 P.S. § 455.301 because they had conducted the business of a rental listing referral agent without first being licensed by the Commission.

Rule 56 of the Federal Rules of Civil Procedure provides that a court shall grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P. 56(c).

The law is clear that when a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure is properly made, the non-moving party cannot rest on the mere allegations of the pleadings. Celotex Corp. v. Catrett, 477 U.S. 317 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986). Rather, in order to defeat the motion for summary judgment, the non-moving party, by its own affidavits, or by depositions, answers to interrogatories or admissions on file, as stated in Fed.R.Civ.P. 56(e), "must set forth specific facts showing that there is a genuine issue for trial." The Court, in determining whether there is a genuine issue of material fact, draws all inferences in favor of the non-moving party. Country Floors v. Partnership of Gepner and Ford, 930 F.2d 1056, 1061 (3d Cir. 1991). However, "[t]he mere existence of a scintilla of evidence" in support of the non-movant's position will not be sufficient to defeat a motion for summary judgment. Anderson, 477 U.S. at 252.

Substantive due process protects citizens from arbitrary and

irrational acts of government. Parkway Garage, Inc. v. City of Philadelphia, 5 F.3d 685, 692 (3rd Cir. 1993). In order to prevail on a substantive due process claim, a plaintiff must prove either that the government's actions in a particular case were not rationally related to a legitimate government interest, or that the government's actions were motivated by bias, bad faith or improper motive. Id.

A substantive due process claim may only be maintained where the plaintiff has "been deprived of a particular quality of property interest." DeBlasio v. Zoning Bd. of Adjustment, 53 F.3d 592, 600 (3d Cir. 1995). Although the Third Circuit has suggested that only "fundamental" property interests are afforded substantive due process protection, it has, as noted in Independent Enter., Inc. v. Pittsburgh Water and Sewer Auth., "provided little additional guidance regarding what specific property interests should receive substantive due process protection." 103 F.3d 1165, 1179 (3d Cir. 1997).

In the instant case, the Plaintiffs have failed to produce any evidence that Defendant Brown's actions taken in connection with the three agents who submitted managerial applications on behalf of RGI were motivated by bias, bad faith or improper motive, or that Defendant Brown's actions were not rationally related to a legitimate government interest. Indeed, Plaintiffs have not produced any evidence that Defendant Brown was doing anything other than fulfilling his duties as a prosecutor. The

evidence produced by Plaintiffs shows only that Defendant Brown contacted the three licensed agents who had submitted managerial applications on behalf of RGI, accurately explained to those persons the responsibilities of a manager of record, warned of the possible penalties if those responsibilities were not fulfilled, and truthfully disclosed to those persons that charges were pending in the Pennsylvania Real Estate Commission against Frederick Royer and Renters Realty.

It is clear that Defendant's actions were rationally related to the government's legitimate interest in protecting the integrity of the rental listing referral profession, and ensuring that individuals and corporations applying for rental listing referral agent licenses met the qualifications required by statute. Moreover, it is clear that Defendant Brown had an entirely proper motive behind his decision to contact the agents who had submitted managerial applications in support of RGI-- namely, to prevent the unlawful practice of falsely listing a manager of record for a rental listing referral agency, just as he sought to prevent such conduct by prosecuting Renters Realty.

There is simply no evidence from which the Court could draw a reasonable inference that Defendant's actions were motivated by bias, bad faith or improper motive. The conduct which Defendant Brown took in connection with RGI's license application fell squarely within his obligations as a prosecutor. Indeed, in light of the ongoing prosecution against Frederick Royer and Renters Realty, Defendant Brown would have been remiss had he

failed to take such action.

Accordingly, the Court is not required to determine whether Plaintiffs had a "fundamental" property interest in their application for a rental listing referral agent's license which would entitle them to substantive due process protection. For the reasons stated above, the Court will grant Defendant's motion for summary judgment, deny Plaintiffs' motion for summary judgment, and will enter judgment in favor of Defendant Brown and against Plaintiffs RGI, Royer, Danas and Warner.

An appropriate order follows.