

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HAMAD SHAMMOUH, et al. : CIVIL ACTION
: :
v. : :
: :
MICHAEL KARP, et al. : NO. 96-4706

M E M O R A N D U M

WALDMAN, J.

August 22, 1997

This is a housing discrimination case. The individual plaintiffs allege that because they have children defendants discriminated against them in refusing to continue their lease at an apartment complex owned and operated by defendants. The Fair Housing Action Center ("FHAC") alleges that it has sustained injury as a result of defendants' discriminatory conduct.

Plaintiffs assert claims for violation of the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq.¹ The Shammouhs allege that after the birth of their first child, defendants told them that they had to move to a ground level apartment or vacate

¹ The Act provides, in relevant part, that: "it shall be unlawful-- (a) To refuse to sell or rent ... or otherwise make available or deny, a dwelling to any person because of ... familial status ... (b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of ... familial status ... (c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on ... familial status ... (d) To represent to any person because of ... familial status ... that any dwelling is not available for inspection, sale, or rental when such a dwelling is in fact so available." 42 U.S.C. § 3604(a)-(d).

the complex.² FHAC alleges that it tested the Summit Garden and Summit Park complexes owned by defendants and uncovered evidence of housing discrimination on the basis of familial status. FHAC asserts a claim predicated on defendants having "interfered with the efforts and programs of plaintiff Fair Housing Action Center" and forced them "to devote scarce resources to identify and counteract defendants' unlawful housing practices."

Presently before the court is defendants' motion for summary judgement against FHAC for lack of standing.

To establish standing a plaintiff must show it has suffered "some threatened or actual injury resulting from the putatively illegal action." Warth v. Seldin, 422 U.S. 490, 498-99 (1975) (citations omitted). When plaintiff is an organization, it may have standing in its own right, i.e. "independent standing" or on behalf of its members, i.e. "associational standing." Fair Housing Council of Suburban Philadelphia v. Montgomery Newspapers, 1997 WL 5185, * 3 (E.D. Pa. Jan 7, 1997).

To establish independent standing, the organization must show that it has suffered an "injury in fact," that there is a causal connection between the injury and defendant's conduct,

²The elements of a familial discrimination claim essentially mirror those of a Title VII claim and may be proved in essentially the same manner. See Kormoczy v. Secretary, U.S. Dep't. of Housing and Urban Development, 53 F.3d 821, 823-24 (7th Cir. 1995). See also Noland v. Commerce Mortgage Corp., 1997 WL 448426 (8th Cir. Aug. 8, 1997); Maki v. Laakko, 88 F.3d 361, 364 (6th Cir. 1996); Asbury v. Brougham, 866 F.2d 1276, 1280 (10th Cir. 1989).

and the that the injury is likely to be redressed by a favorable decision. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992). To establish associational standing, the organization must show that its members would have standing to sue in their own right, that it seeks to protect interests germane to its own interests and that the participation of the individual members is not required. Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 343 (1977). The burden of establishing standing is on the party asserting it. Lujan, 504 U.S. at 561.

That an organization can effectively create independent standing by defining its mission to include the eradication of conduct by others aimed at third parties that it wishes to achieve standing to challenge is somewhat troubling. It is even more conceptually troublesome to predicate standing on a "frustration" of such an organization's mission which causes a "drain" on its resources where in fact the organization is devoting its resources to accomplishing its mission. If an organization obtains funding to combat narcotics use and trafficking, it is difficult to accept that its mission has been frustrated causing a "drain" of its resources because its employees went out and actually identified drug dealers and referred them for prosecution. It is similarly difficult for the court to discern how FHAC has been frustrated in its mission of combating housing discrimination by the fact that it identified someone who may be discriminating or how its resources were "drained" when used for an intended purpose to effect the mission

of the organization. Nevertheless, the current state of the law is otherwise.

The United States Supreme Court has held that a similar non-profit fair housing organization in Virginia had standing to sue an apartment complex owner allegedly engaged in racial steering based on allegations that such conduct frustrated the mission of the organization of promoting equal access to housing and forced them to devote resources to identify and counteract such practice. See Havens Realty Corp. v. Coleman, 455 U.S. 363, 379 (1982). There is no principled way the court can distinguish the situation in Havens from that in the instant case where FHAC avers defendants engaged in a pattern and practice of housing discrimination which has frustrated FHAC's efforts to promote fair housing and caused FHAC to devote resources to additional educational and advertising efforts to counteract defendants' conduct. Like FHAC, the plaintiff organization in Havens was involved in counseling, investigating allegations of discrimination and referring complaints to federal and state authorities, conducting independent investigations and taking steps to eliminate any discriminatory practices found. See Coles v. Havens Realty Corp., 633 F.2d 384, 385 (4th Cir. 1980).

Other Courts certainly appear to read Havens as this court does. See Ragin v. Harry Macklowe Real Estate Co., 6 F.3d 898, 905 (2d Cir. 1993); Hooker v. Weathers, 990 F.2d 913, 915 (6th Cir. 1993); Spann v. Colonial Village, Inc., 899 F.2d 24, 27 (D.C. Cir. 1990); Village of Bellwood v. Dwivedi, 895 F.2d 1521,

1526 (7th Cir. 1990).

Fair Housing Council v. Main Line Times and Fair Housing Council v. Montgomery Newspapers, relied upon by defendants, are not to the contrary. The court in those cases found that the dedication of resources to pursuit of the pending action did not confer standing. Fair Housing Council v. Main Line Times, 1997 WL 30642, *3 (E.D. Pa. Jan. 27, 1997); Fair Housing Council v. Montgomery Newspapers, 1997 WL 5185, *7 (E.D. Pa. Jan. 7, 1997). See also Fair Employment Council of Greater Washington, Inc. v. BMC Marketing Corp., 28 F.3d 1268, 1277 (D.D. Cir. 1994) (internal reallocation of funds from one program to another did not confer standing). Significantly, the court in Montgomery Newspapers noted that plaintiff "failed to set forth specific evidence demonstrating that its various programs have been 'perceptibly impaired' as a result of the diversion of its resources from them to activities counteracting defendants' allegedly discriminatory acts." Montgomery Newspapers, 1997 WL 5185 at *7.

FHAC's claim of associational standing is another matter. According to the affidavit of Maria Macaluso, its Director, FHAC is a private agency created to deal with housing discrimination in Philadelphia. FHAC is a project of the Tenant's Action Group ("TAG"), a non-profit organization. FHAC asserts that TAG's "constituency" encompasses all the tenants of Philadelphia and that it has approximately 600 members including tenants, tenant councils, advocates, representatives from

Community Development Corporations, civic leaders and landlords. FHAC asserts representational standing based on injuries to the constituents of TAG, and specifically point to the Shammouhs.

To maintain associational standing, FHAC must establish that it has members who have standing to sue in their own right. See Hunt, 432 U.S. at 343. FHAC has not done so. FHAC identifies itself as a "private agency" and has not identified members who would have standing. FHAC loosely refers to TAG's "constituency" which includes "the tenants of the City of Philadelphia." Having a constituency does not confer standing. Indeed, having members does not confer standing unless they have standing to sue in their own right. Id. TAG is not a plaintiff in this action. FHAC has not presented any competent evidence establishing its membership, let alone evidence of members who have suffered cognizable injury. See Montgomery Newspaper, 1997 WL 5185 at * 9 (organization which did not identify member who had been injured lacks associational standing).

FHAC argues alternatively that it has associational standing based upon the standing of its testers. The court agrees with the Seventh Circuit that "the standing of testers is ... dubious," as "they suffer no harm other than that which they invite in order to make a case against the persons investigated." Village of Bellwood, 895 F.2d at 1526. Nevertheless, the court is bound by the Supreme Court's determination that a tester who has been the object of a misrepresentation made unlawful by the Fair Housing Act has standing. Havens, 455 U.S. at 373-374. The

testers in this case, however, are not plaintiffs. FHAC has cited and the court has found no case supporting the proposition that an organization has standing to sue for injuries to its employees. Indeed, the Eleventh Circuit has stated that associational standing "is properly reserved for voluntary membership organizations" and has no application where an employer seeks standing to assert the interests of its employees. Region 8 Forest Serv. Timber Purchasers v. Alcock, 993 F.2d 800, 810 n.15 (11th Cir. 1993).

FHAC has not established that it has associational standing. FHAC does have independent standing.³

Accordingly, defendants' Motion will be denied. An appropriate order will be entered.

³ FHAC, however, cannot have it both ways. It cannot claim that as a result of defendants' alleged conduct its efforts have been frustrated and its resources drained or diverted and at the same time refuse to provide discovery on matters pertinent to the performance of its mission, its revenues, expenditures and budgeting and allocation processes.

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O R D E R

AND NOW, this day of August, 1997, upon
consideration of defendants' Motion for Partial Summary Judgment
(Doc. #51, Part 1) and plaintiffs' opposition thereto, consistent
with the accompanying memorandum, **IT IS HEREBY ORDERED** that said
Motion is **DENIED**, and **IT IS FURTHER ORDERED** that defendants'
Motion to Stay Discovery (Doc. #51, Part 2) is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.