

William H. Shaevel
Kenneth A. Krems
Daniel S. O'Connor
David R. Jackowitz
Amy Rosengarten Waksler
Craig D. Nickerson

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A D V I S O R Y

The Massachusetts Commission Against Discrimination issued a decision last month holding that an employee of a discriminatory landlord will not be held personally liable unless the employee demonstrated the individual intent to engage in illegal discrimination. The case is Massachusetts Comm. Against Discrimination and Leveille v. Cherry Hill Estates Trust, Renaissance Realty Trust, et al, (MCAD, December 2003).

This case imparts two important lessons. First, a landlord that adopts a policy of automatically rejecting Section 8 recipients will be held liable for public assistance discrimination under G.L. c. 151B. Second, even if a landlord adopts a misguided and discriminatory policy, the manager who carries out the policy will not be held personally liable unless the Complainant can show that the manager herself was motivated by discriminatory intent.

In the case, the Complainant had a Section 8 voucher and sought to rent a unit from the landlord, Renaissance Realty Trust. The landlord had a manager whose job was to answer inquiries about available units, show prospective tenants the units or models, distribute rental applications, check references, decide who could rent the units, and maintain rental records. The Complainant spoke to the manager about renting a unit and the manager told her that the landlord had a policy of not renting to Section 8 voucher recipients. The Complainant brought a charge of discrimination against the landlord and also against the manager in her individual capacity, claiming that both had discriminated against her on the basis of public assistance. After a public hearing, the hearing officer found that the landlord had violated G.L. c. 151B but dismissed the case against the manager in her individual capacity. In deciding to dismiss the case against the manager, the hearing officer found that she acted entirely within the scope of her employment and under the direction and control of the landlord when she told prospective renters that the landlord did not accept Section 8 housing subsidies. The Complainant appealed the decision to the full Commission and sought to have the Commission hold the manager personally liable for a violation of the state Fair Housing Law.

The Commission held that the manager was not liable in her individual capacity and upheld the hearing officer's decision to dismiss the case against her. The Commission concluded that she was not individually liable because she did not possess individual intent to engage in illegal discrimination. Although the policy of the landlord to reject all applicants who were recipients of Section 8 assistance violated the law, the mere fact that the manager was the person who carried out this policy did not subject her to individual liability.

If you have any questions about the case discussed in this Advisory, please feel free to contact any member of the Shaevel & Krems Labor, Employment and Discrimination Team.

Bill Shaevel, Esq.

Dan O'Connor, Esq.

Ken Krems, Esq.

Amy Rosengarten Waksler, Esq.

Kathy Nagle, Paralegal

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