Landlords Beware: Serial Plaintiffs Can Be Costly

By Jeremy Weltman on March 25, 2021

Massachusetts residential real estate lessors, property managers and brokers are facing increased scrutiny over alleged Fair Housing Act ("FHA") violations. In fact, in recent months, over a dozen lawsuits have been filed in both State and Federal Courts, as well as the Massachusetts Commission Against Discrimination ("MCAD") against various lessors, property managers and brokers of all shapes and sizes – from single-family dwellings to multi-unit complexes.

There are several common features across all of these lawsuits. First, the plaintiff (or complainant at the MCAD) is the same in every case. Second, the allegations of wrongdoing follow a well-established script:

> A) an entity claiming to "manage, operate, sell and lease" properties for the operation or management of sober housing for purportedly disabled individuals makes contact with a would-be lessor, property manager or broker seeking a "corporate lease," or the like – no other details given;
>
> B) after the would-be lessor, property manager or broker indicates general interest, the inquiring party explains that it is seeking such housing for disabled individuals, classified as such by the FHA so long as the individuals in question are "in recovery" from alcoholism and/or drug dependency;
>
> C) with these would-be individuals in recovery never having been identified, and without ever receiving an actual application to lease, the lessor, property manager or broker informs the inquiring entity that they would prefer not to lease to individuals in recovery from alcoholism and drug dependency;
>
> D) days later, the lessor, property manager and broker are all served with a complaint filed by the inquiring entity alleging discrimination under the FHA and the state-equivalent under Mass. Gen. Laws c. 151B. The complaint makes the same allegation each time that the would-be lessor, property manager and broker "are making housing opportunities unavailable to [suing entity] and to its prospective tenants because of the fact that prospective tenants are disabled individuals in recovery from substance abuse." The complaint also alleges that the lessor, property manager and broker "violated state law by denying or refusing housing due to [suing entity's] association with disabled individuals, enforcing discriminatory rules and internal policies, interfering with the rights of the intended occupants, and targeting [suing entity] because of its association with disabled individuals."

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Where the same or similar allegations across the various lawsuits appear to be carbon copies of a previous version of the same lawsuit, individual case scrutiny is not only warranted, but absolutely necessary. Indeed, among other possible defenses, there are statutory exemptions from application of the FHA that could apply, which is why the unique facts to each scenario must be carefully analyzed before creating a litigation plan, with the ultimate goal to minimize unnecessary and costly legal fees and expenses through forward planning at the outset – including, importantly, how to best respond to the initial inquiry so as to avoid becoming the next target.

*Attorney **Jeremy Y. Weltman** is a member of RIW's **Litigation Department**. He has direct hands-on experience handling accessibility litigation and this serial plaintiff/complainant, in particular. For more information about these matters, other recent accessibility litigation being handled by RIW, or your case, please contact Jeremy Weltman directly at 617-742-4200, or **jyw@riw.com**.*

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