

Legal Interpretation of Subsection 802(i)

Legal Opinion: GME-0002

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Subject: Legal Interpretation of Subsection 802(i)

November 4, 1991

MEMORANDUM FOR: Jacquelyn J. Shelton, Director
Office of Fair Housing Enforcement
and Section 3 Compliance

FROM: Harry L. Carey, Assistant General Counsel
for Fair Housing

SUBJECT: Legal Interpretation of Subsection 802(i) - Standing
Case Number 06-90-0663-1

This responds to your memorandum regarding the above-referenced case in which you raised questions regarding several complainants' standing to sue under Title VIII. The case raises three separate standing questions: (1) whether a tenant whose visitors are affected by her lessor's alleged discriminatory action has standing; (2) whether non-resident visitors who are directly affected by a housing provider's alleged discriminatory action have standing; and (3) whether a non-resident whose children have been directly affected by a housing provider's alleged discriminatory action, but who herself has not been directly affected by that action, has standing?

Complainants allege that Respondent Denton (Texas) Housing Authority (DHA) selectively enforces its criminal trespass policy in a manner which discriminates against Blacks. Complainant Ollie Darrough (companion case) is a DHA tenant. Complainants Connie and Jerome Madison, minors, are not DHA tenants. DHA, allegedly because they are Black, caused them to receive criminal trespass warrants and be arrested, allegedly while visiting their aunt (Complainant Darrough) at DHA's property. Complainant Janet Madison, the sister of Complainant Darrough, filed a complaint on her own behalf, as well as on behalf of her minor children, Connie and Jerome.¹

Regarding the first issue, Complainant Darrough, as a DHA tenant, has standing to challenge DHA's alleged discriminatory application of its criminal trespass policy. Unlawful conduct

¹ The record is unclear whether Complainant Janet Madison was ever intimidated or otherwise directly affected by DHA's allegedly discriminatory criminal trespass policy while attempting to visit her sister at DHA's property. The discussion that follows respecting her complaint assumes that she was not, unless the contrary is expressly stated.

under section 818 of the Fair Housing Act (Act) includes threatening, intimidating, or otherwise interfering with persons in their enjoyment of a dwelling because of their race or the race of their visitors or associates. 42 U.S.C. 3617; 24 C.F.R. 100.400(c)(2)(1991). Also, subsection 804(b) of the Act prohibits limiting privileges, services, or facilities associated with a dwelling because of the race of a tenant or a person associated with her. 42 U.S.C. 3604(b); 24 C.F.R. 100.65(b)(4)(1991). DHA allegedly interfered with Complainant Darrough's enjoyment of her dwelling by intimidating her relatives when they come to visit.

With respect to the second and third standing issues, the Act's definition of "aggrieved person" in subsection 802(i) includes anyone who claims to have been injured by a discriminatory housing practice or believes that he or she will be injured by a discriminatory housing practice that is about to occur. Courts interpreting this definition have construed its coverage to be very broad. The Supreme Court has determined that Title VIII standing is "as broad as is permitted by Article III of the Constitution." *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 109 (1979) ("Bellwood"), citing *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205, 209 (1972). In order to satisfy the standing requirements of Article III, the complainant must show that he has personally suffered some actual or threatened injury which is fairly traceable to respondent's conduct, and is likely to be redressed by a favorable decision. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982).

Complainants Connie and Jerome Madison are persons directly affected by DHA's alleged discriminatory criminal trespass policy.² Both Connie and Jerome, on separate occasions, were warned, received trespass notices from DHA, and ultimately were arrested by the police while they purportedly were visiting Complainant Darrough or other relatives at DHA's property. If proven that DHA had enforced its policy against these Complainants in a racially discriminatory fashion, a court could award them damages to redress their injury. Thus, because actions traceable to DHA injured Complainants Connie and Jerome Madison, and a court could redress those injuries, they satisfy the requirements for standing.

Indirect victims of discrimination also may have standing to challenge discrimination directed against others, so long as that discrimination has caused the complainant some personalized

² DHA participates with the Denton Police Department to enforce its criminal trespass policy through a Community Oriented Policing (COPS) program whereby tenants work with the police to reduce crime in the housing projects.

injury, is traceable to the respondent, and a court could redress the injury. As stated in *Bellwood*, 441 U.S. at 103 n.9, anyone may sue who is "genuinely injured by the conduct that violates someone's rights." The issue to be decided in determining if Janet Madison has standing is whether she has been "genuinely injured" as a result of DHA's alleged discriminatory conduct and if so, whether a court could redress that injury.

It is well established that complainants are entitled to damages for out-of-pocket expenses and lost wages caused by a housing provider's discriminatory conduct. See, e.g., *Secretary of HUD v. Blackwell, Fair Housing-Fair Lending (P-H)* para. 25,001, 25,010-11 (Dec. 21, 1989), *aff'd*, 908 F.2d 864 (11th Cir. 1990). Courts also have held that a complainant is entitled to compensation for the damages inflicted on other members of his/her family, to the extent that he/she is directly damaged by the harm the discriminatory actions caused the other family members. See *Secretary of HUD v. Morgan, P-H* para. 25,130, 25,138 n.20 (July 25, 1991), citing *Davis v. Mansards*, 597 F. Supp. 334, 347-48 (N.D. Ind. 1984).

Assuming, *arguendo*, the validity of the allegations of discrimination, Complainant Janet Madison would be "genuinely injured" and, thus, have standing if: (1) She suffered any economic loss proximately caused by DHA having her children arrested, e.g., if she posted bail, incurred legal expenses or medical expenses (due to injuries her children sustained during arrest), lost wages (due to time spent consulting with a lawyer, picking her children up at jail, visiting them in jail), or incurred travel expenses (to pick her children up at jail, or to visit them); (2) She was discouraged from visiting her sister or other relatives who live at DHA's property because of DHA's treatment of her children; or (3) She suffered emotional distress resulting from DHA's alleged discriminatory conduct.

It appears that Janet Madison was genuinely injured as a result of DHA's enforcement of its criminal trespass policy and has standing. She stated in her affidavit, submitted contemporaneously with her complaint, that she suffered emotional distress resulting from Respondent denying her (and her family) the opportunity to visit her relatives because of race. She also stated that her daughter remains under a physician's care due to serious neck and hip injuries that she sustained while being arrested.³ It is reasonably foreseeable that a mother, with custody of two minor children who have suffered the above-described injuries as a result of DHA's actions, would suffer

³ It is not clear from the record provided, but these physical injuries, allegedly the result of DHA's actions, may have caused Ms. Madison emotional distress and/or out-of-pocket expenses.

emotional distress. Since actions traceable to DHA injured Ms. Madison, and a court could redress those injuries, she satisfies the requirements for standing.

If you have any further questions relative to this matter, please call Jonathan Strong, Deputy Assistant General Counsel for Fair Housing Litigation at 708-0340 or Jon M. Seward at 708-2208.