

In true Montana spirit, the Chuckwagon...the newsletter to fill your fair housing appetite.



The Chuckwagon

September 2013

A quarterly production by
MONTANA FAIR HOUSING

Montana Fair Housing is a private, non-profit, civil rights organization providing education, outreach, and enforcement activities throughout the state of Montana and elsewhere. MFH does not have an attorney on staff. Information contained in this newsletter should not be construed as legal advice and does not provide a legal opinion.

STATE EMPLOYEE CHARITABLE GIVING CAMPAIGN

This year the SECGC runs from September 30 through November 8. If you are a state employee, please consider supporting Montana Fair Housing's work!

Our giving campaign organization number is **5258**.

THANKS TO ALL WHO CURRENTLY GIVE TO MFH!!!

Tales Roun' the Campfire

No. 11-55460 / D.C. No. 8:08-cv-00457-JVS-RNB
PACIFIC SHORES PROPERTIES, LLC, a California limited liability company; ALICE CONNER; SEAN WISEMAN; TERRI BRIDGEMAN, Plaintiffs-Appellants,
ANDREW BLAIR, Plaintiff,

v.

CITY OF NEWPORT BEACH, a California municipal corporation, Defendant-Appellee.

No. 11-55461 / D.C. No. 8:09-cv-00701-JVS-RNB
NEWPORT COAST RECOVERY LLC, a California Limited Liability Company; YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC., Plaintiffs-Appellants,

v.

CITY OF NEWPORT BEACH, a California municipal corporation, Defendant-Appellee.

On September 20th the Ninth Circuit issued a 59 page opinion reversing the 2012 lower court orders granting summary judgment in favor of the City of Newport Beach. This article is a very brief synopsis of that opinion.

The original claims alleged that a City ordinance "violated the Fair Housing Act, the Americans with Disabilities Act, the California Fair Employment and Housing Act, and the Equal Protection Clause by having the practical effect of prohibiting new group homes for recovering alcoholics and drug users from opening in most residential zones." Persons recovering from addiction are protected from housing discrimination under state and federal anti-discrimination laws. Defendants argued that the ordinance "imposed restrictions" on other types of group living arrangements and therefore was facially neutral.

The three group home Plaintiffs existed prior to the

enactment of the ordinance. The individual Plaintiffs are an owner and two former residents of Pacific Shores. The groups homes, two being unlicensed, had invested hundreds of thousands of dollars purchasing and renovating the homes.

The opinion, written by Judge Reinhardt, states in part, "Prior to 2008, "group homes"—i.e., homes in which recovering alcoholics and drug users live communally and mutually support each other's recovery—were generally permitted to locate in residential zones in the City of Newport Beach . . . By 2008, a number of residents of the City launched a campaign to restrict or eliminate group homes in their neighborhoods." In a series of public meetings, residents repeatedly described persons in recovery as "not true handicapped," "criminals," "gang members," and "druggies," among other derogatory terms.

In early 2007 the Mayor of the City of Newport Beach sent an e-mail to a citizen stating "I suspect that these [group home] facilities do nothing to really solve the problem but only serve as warehouses [sic] for alcoholics and drug addicts until they really hit bottom."

In 2007 the City enacted "several moratoria," and ultimately passed an ordinance in 2008 that had the "practical effect of prohibiting new group homes from opening in most residential zones. Even in the few areas where they were permitted to open, new group homes were required to submit to a permit process. Existing group homes also had to undergo the same permit process in order to continue their operations."

A key element of the ordinance amended the definition of "single housekeeping unit" to exclude group homes. The ordinance required that "(1) a single housekeeping unit have a single, *written* lease and (2) the residents themselves must decide who will be a member of the household. As a result of these amendments, group homes no longer qualify as "single housekeeping units" . . ."

Originally the City, on advice of counsel, intended to regulate properties rented to vacationing tourists in order to "avoid the appearance of discriminating against group homes." The City created a committee to "to review and understand the state and federal laws and regulations that limit [the] City's ability to regulate" and "to research and identify solutions to the problems and make . . . recommendations to the [C]ity [C]ouncil." Craig Batley, a

realtor and member of this committee, e-mailed City Council members to express the view that "the focus needs to be on Group Homes and only Group Homes." The committee ultimately submitted a proposed ordinance that "imposed a moratorium on establishing or operating any new "transitory uses" in a residential district for a period of 45 days, including group homes and short term lodgings." In order to prove that group homes posed a different set of social problems vs. those created by vacationing rental units, the City created and distributed a survey, seemingly targeting citizens known to be opposed to group homes. The City attorney prepared a summary of the 47 survey responses and recommended the City Council exempt vacationing rentals from the moratorium. As a result of resident opposition and despite evidence that those rentals often create "similar social problems as group homes," the City re-drafted the ordinance to exclude vacation rentals. The district court did find that the revised Moratorium was facially discriminatory because it singled out group homes for adverse treatment.

Also in 2007, the City created a task force to "verify" the number and location of group homes in the City, and to enforce code violations against them, including violations of the then applicable moratorium. The City investigated group homes by searching the internet to locate them and pose as a potential client. The group homes were visited to observe the properties, and photograph residents, vehicles, and license plates at or around the properties. City employees attended meetings of a citizen advocacy group opposed to group homes, who provided lists of additional suspected group home sites for investigation.

During this time, the Planning Commission continued to work toward amending the zoning code. The City Planner and outside counsel advised that short-term lodgings must be included to avoid enacting an illegal discriminatory ordinance. A Commissioner, also a member of the Committee reviewing the applicable laws "limiting" the City's ability to regulate, endorsed a more aggressive draft submitted by the citizen's advocacy group opposed to group homes. He suggested that the Commission not concern itself with legal issues, and "save that for the courtroom." The City's outside legal counsel was replaced with the legal counsel secured by the citizen advocacy group's counsel.

The three-judge panel found that Plaintiffs' evidence shows that the City's purpose in enacting the Ordinance was to exclude group homes from most residential districts and to bring about the closure of existing group homes in those areas. The evidence also shows that the Ordinance regulated other types of group residential arrangements primarily for the purpose of maintaining a veneer of neutrality. The district court acknowledged the evidence that the City acted with a discriminatory motive but found that evidence "irrelevant" . . .

We reverse and hold that the district court erred in disregarding the evidence that the City's sole objective in enacting and enforcing its Ordinance was to discriminate against persons deemed to be disabled under state and federal housing discrimination laws . . . there is direct or circumstantial evidence that the defendant has acted with a discriminatory purpose and has caused harm to members of a protected class . . . This is no less true where, as here, the defendant is willing to harm certain similarly-situated individuals who are not members of the disfavored group in order to accomplish a discriminatory objective . . . Such a rule presents the "grotesque scenario where a [defendant] can effectively immunize itself from suit if it is so thorough in its discrimination that all similarly situated [entities] are victimized." As one district court observed in a case quite similar to this one, "that an ordinance that also discriminates against individuals unprotected by the FHA does not eliminate a FHA violation." This "grotesque scenario" is not the law. A willingness to inflict collateral damage by harming some, or even all, individuals from a favored group in order to successfully harm members of a disfavored class does not cleanse the taint of discrimination; it simply underscores the depth of the defendant's animus.

The Opinion also noted that the Plaintiffs presented evidence that they experienced a significant decline in business after the Ordinance's enactment, that the publicity surrounding the Ordinance greatly reduced referrals, and that current and prospective residents expressed concern about whether the group home Plaintiffs would close . . . In addition, we hold that the costs borne by the Plaintiffs to present their permit applications and the costs spent assuring the public that they were still operating despite the City's efforts to close them are compensable.

UPCOMING EVENTS: Housing Conference 2014 - April 22 & 23, 2014 in Helena
Watch for registration information on our website at www.montanafairhousing.org

Discrimination in housing occurs when a housing provider makes a decision about a consumer's eligibility for services based on the consumer's protected class status. A housing provider cannot deny you services nor place different terms and conditions on you BECAUSE OF your membership in a protected class. Federal protected classes include: Race, Color, National Origin, Religion, Sex (including sexual harassment), Familial Status (presence of children under the age of 18 or pregnancy), and/or Disability (Mental or Physical, including requests for reasonable accommodations and reasonable modifications). In the state of Montana, in addition to the federally protected classes, it is a violation of the state's Human Rights Act to discriminate in housing related transactions based on marital status, age, and/or creed. In the Cities of Missoula and Helena, a housing provider cannot discriminate against a household because of gender identity or sexual orientation.



For More Information about Discrimination in Housing, or to File a Complaint, contact:

Montana Fair Housing * 519 East Front Street * Butte, MT 59701
Voice: 406-782-2573 or 800-929-2611 * FAX: 406-782-2781 * MT Relay Service: 711
E-Mail: inquiry@montanafairhousing.org * Website: montanafairhousing.org