

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



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.

Tales Roun' the Campfire

A synopsis and/or update of cases filed with the Montana Human Rights Bureau (HRB), the Department of Housing and Urban Development (HUD), and/or federal or district court. This summary is not all inclusive . . .

Federal Judge Rules Housing Provider's Attempt to Force Mediation is Unenforceable

Judgment Issued Against Bozeman Broker, Real Estate Agent and Property Manager on Counterclaim in Fair Housing Case

In December 2013, Kristen Newman and Montana Fair Housing filed a complaint of housing discrimination with HUD alleging that property manager and real estate broker Jaclyn Katz failed to provide a reasonable accommodation to a person with a disability in violation of the Fair Housing Act. The Complaint was amended in February 2014 to include allegations that Katz made housing unavailable, made discriminatory statements, and interfered with the exercise of rights protected by the Act. Ultimately Katz's firm, All Real Estate Services in Montana, was also named as a party responsible for violating federal fair housing laws.

In August of 2014, HUD's Fair Housing and Equal Opportunity Office in Region VIII found in favor of Ms. Newman and MFH and issued a formal Charge of Discrimination against Katz and her firm.

The property manager and her firm elected to have the case heard in federal court. On October 6, 2014, the Civil Rights Division for the US Department of Justice, along with the US Attorney in Montana, filed an action in the United States District Court against Ms. Katz and All Real Estate Services in Montana. MFH and Ms. Newman intervened in the case as plaintiffs in January 2015, adding violations of the Montana Human Rights Act and other state claims against the defendants.

In April, MFH added two defendants, the Orleans Condominiums Owners Association, Inc. and Uptown Condominiums Owners Association, Inc., corporations that are charged with responsibility for properties managed by ARESM and owned by Katz. In response to the Amended Complaint in Intervention, defendants filed a Counterclaim against Montana Fair Housing and Ms. Newman for Breach of Contract.

Defendants asserted that MFH was an "agent" for Newman for helping her with a request for reasonable accommodation, and that Newman and MFH "breached" the rental agreement by refusing to submit "the dispute to mediation" and pay half the mediation fees prior to filing the original complaint with HUD and intervening in the federal case. Defendants referenced Page 2 of the Addendum to the Rental Agreement stating: "Penalties for Wasting Managers' Time At A Rate Of \$100[.] Per Hour (1 hour minimum)... "8. Any violation or infraction of

any Rules or Regulation. ... 11. Other abuses of managers' time." . . . "10. Because neither Montana Fair Housing nor Ms. Newman submitted their dispute to mediation before filing a housing discrimination complaint with the United States, and their several Complaints in Intervention, they violated the Rules and Regulations, for which the contract requires the payment of a \$100 charge for the time Ms. Katz must spend on these issues." Katz has stated repeatedly she considers the HUD investigation and the federal lawsuit against her for violating fair housing laws a complete "waste of time."

MFH and Newman answered the Counterclaim, then moved for summary judgment against Katz and ARESM on the Counterclaim. Following a hearing on September 8, 2015, federal judge Sam Haddon issued an order granting summary judgment in favor of the plaintiffs concluding "that we do not have a contract before the Court, in the form written in this addendum to [the] rental agreement, that would entitle this Court to either order mediation in some fashion or to have the capacity to enforce the result of any such mediation." Judge Haddon also concluded that "there is no legally supportable basis in law for the defendant to assert that the plaintiffs' failure to mediate constitutes a violation of the rental agreement. . . And, more particularly, it does not appear to this Court that the federal statutes upon which the plaintiffs rely . . . are in any way hampered by or limited by the assertion." The Court also found that "there is no contract upon which such a claim of appropriate procedure could be based, and the motion for summary judgment is granted. The counterclaim [by Katz and ARESM] is dismissed."

Following Judge Haddon's ruling that there was "no legally supportable basis" for filing a breach of contract claim against MFH, Montana Fair Housing filed a charge of illegal retaliation against ARESM and Katz with the Montana Human Rights Bureau. The October 27, 2015, charge alleges Katz and ARESM filed a factually and legally baseless civil action in an effort to retaliate against MFH because it intervened in

the federal case and filed an amended complaint, and because it assisted, aided and encouraged a person with a disability to exercise her fair housing rights. The state investigation of the charge is expected to be completed sometime at the end of April 2016.

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 a household services nor place different terms and conditions on that household **BECAUSE OF** membership in a protected class.

Federal protected classes include: Race, Color, National Origin, Religion, Sex (including sexual harassment and protections for victims of Domestic Violence), 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). Fair Housing laws require owners, developers, architects, and contractors to design and construct multi-family housing of four or more units to be adaptable and accessible for persons using a wheelchair for mobility, if constructed for first occupancy after March of 1991.

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 Butte, Missoula, Bozeman 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:

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