UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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MINUTE ORDER

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United States of America,

Plaintiff,

vs.

Van Raden Properties, Inc., and
Van Raden Homes, Inc.,

Defendants. Civ. No. 08-5873 (PJS/RLE)

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I. Introduction

This matter came before the undersigned United States Magistrate Judge pursuant to a general assignment, made in accordance with the provisions of Title 28 U.S.C. §636(b)(1)(A), upon the Motion of Fair Housing of the Dakotas ("FHD") to Intervene as a Plaintiff in this action. A Hearing on the Motion was conducted on January 30, 2009, at which time, the Defendants Van Raden Properties, Inc., and Van Raden Homes, Inc. (collectively, "Van Raden"), appeared by Daniel E. Phillips, Esq.,

and FHD appeared by Justin D. Cummins, Esq.[1] For reasons expressed at the Hearing, and briefly reiterated below, FHD's Motion to Intervene is granted.

II. Factual and Procedural Background

In this action, the Government alleges that Van Raden, which owns and manages the Elm Street Apartments, in Moorhead, Minnesota, has engaged in discriminatory housing practices, in violation of Title VIII of the Civil Rights Act, as amended by the Fair Housing Amendments Act, Title 42 U.S.C. §§3601-3619 (the "Act"). See, Complaint, Docket No. 1. As noted, FHD now seeks to intervene in this action as a Plaintiff.[2] See, Docket No. 7.

According to the Complaint, on or about January 9, 2007, FHD received a complaint of housing discrimination on the basis of disability. See, Complaint, supra at ¶10. The complainant was a prospective renter, who had responded to a newspaper

[1]No appearance was made by, or on behalf of, the Government, although it submitted a memorandum in support of FHD's Motion to Intervene. See, Docket No. 17.

[2]As alleged in the Complaint, FHD is a non-profit fair housing organization, which provides "fair housing services, including assistance to individuals pursuing legal rights and remedies, housing assistance, counseling, community education, investigation of complaints of housing discrimination, and fair housing testing to determine whether housing providers engage in discriminatory housing practices." Complaint, supra at ¶9.

advertisement concerning Van Raden's property. Id. However, after the complainant advised the rental agent that he has a service dog, which weighs thirty-five (35) pounds, and which lives with him, the rental agent allegedly "rejected [the complainant] because * * * [Van Raden's] policy prohibited dogs of his dog's breed and dogs weighing more than 40 pounds." Id.[3]

Thereafter, on January 17, 2007, FHD conducted a rental test, by having two (2) individuals "seek information about the availability of rental property to determine whether discriminatory practices are occurring." Id. at ¶11. Each individual posed as a single mother with one (1) child, called the telephone number listed in the newspaper advertisement, and asked if a two (2) bedroom apartment was available for rent. Id. at ¶¶12, 14.[4] The first individual ("Tester 1") advised the rental agent that

[3]According to the Complaint, in April of 2002, Van Raden implemented a written policy on service animals, which requires a rental applicant to "provide a written statement about why the animal is needed," and complete additional paperwork concerning the service animal. See, Complaint, supra at ¶16. The policy expresses a preference for service dogs weighing less than forty (40) pounds, and it bans several full and mixed breeds. Id. at ¶17. Lastly, any approved renters with service animals must provide proof of renter's liability insurance in the amount of $100,000.00, while no such minimum coverage amount is required for approved renters without service animals. Id. at ¶16.

[4]The individuals who conducted the rental test did not actually intend to rent property. See, Complaint, supra at ¶11.

her child was autistic, and that he had a therapy dog, which she described as a full-grown "black Lab," weighing thirty-seven (37) pounds. Id. at ¶12. Tester 1 was informed that the dog's breed was unacceptable, and she was directed to the Humane Society for a list of landlords that allow pets. Id. at ¶¶12-13. By comparison, the second individual ("Tester 2") -- who made no mention of a service animal -- was told that the apartment was available, and that no pets were allowed in the building. Id. at ¶14. In addition, the rental agent provided Tester 2 with additional information about the property, including its address, rental terms, and more. Id.

Following the rental test, on June 12, 2007, FHD filed a timely complaint with the United States Department of Housing and Urban Development ("HUD"), in which it alleged that Van Raden had discriminated against renters with disabilities who employ service animals. Id. at ¶18. FHD alleged: 1) that it had been injured when Tester 1 "was denied the opportunity to view or rent the apartment based on [Van Raden's] service animal policy," and 2) that Tester 1 "was denied a reasonable accommodation to such policy * * * ." Id. HUD investigated the complaint, and concluded that there was reasonable cause to believe that Van Raden had engaged in discriminatory housing practices. Id. at ¶19; see also, Title 42 U.S.C. §3610(a), (b), and (g)(1).

As a result, on September 9, 2008, HUD issued a Charge of Discrimination against Van Raden, pursuant to Title 42 U.S.C. §3610(g)(2)(A). Id. at ¶20. On September 29, 2008, Van Raden elected to have HUD's charges resolved in a civil action, as permitted by the Act. Id. at ¶21; see, Title 42 U.S.C. §3612(a), (o). Accordingly, on October 29, 2008, the Government commenced this action, on behalf of FHD, id. at ¶2, in which it alleges that Van Raden violated the Act, by engaging in discriminatory housing practices on the basis of disability. Id. at ¶23. The Government seeks both declaratory and injunctive relief, as well as damages payable to FHD. Id. at pp. 7-8.

As we have noted, FHD now seeks to intervene as of right, pursuant to Rule 24(a)(1), Federal Rules of Civil Procedure, and as permitted by Section 3612(o)(2) of the Act. See, Docket No. 7.[5] However, Van Raden opposes the Motion, and contends that FHD lacks standing to intervene. See, Defendants' Memorandum in Opposition, Docket No. 13. Given this factual backdrop, we address the parties' arguments in turn.

[5]FHD has not asserted any other basis for intervention, pursuant to either Rule 24(a) or Rule 24(b), Federal Rules of Civil Procedure.

III. Discussion

Rule 24(a)(1), Federal Rules of Civil Procedure, provides that "[o]n timely motion, the court must permit anyone to intervene who * * * is given an unconditional right to intervene by a federal statute[.]" Here, FHD seeks to intervene pursuant to Section 3612 of the Act, which provides that "[a]ny aggrieved person with respect to the issues to be determined in a civil action under [section 3612(o)] may intervene as of right in that civil action." Title 42 U.S.C. §3612(o)(2). In turn, the Act defines an "aggrieved person" as "any person who (1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur." Title 42 U.S.C. §3602(i).

Here, there is no dispute that FHD's Motion to Intervene was timely filed. Instead, Van Raden contends that FHD lacks standing to intervene, because it is not an "aggrieved person," within the meaning of the Act. See, Defendants' Memorandum in Opposition, supra at p. 2. Van Raden's primary contention is that FHD has not suffered an "injury in fact" as a result of Van Raden's allegedly discriminatory practices. Id.

Although Rule 24(a), Federal Rules of Civil Procedure, does not address standing, our Court of Appeals has held that a party must have Article III standing in

order to intervene as a matter of right. See, Mausolf v. Babbitt, 85 F.3d 1295, 1300 (8th Cir. 1996); Eischeid v. Dover Constr., Inc., 217 F.R.D. 448, 467 (N.D. Iowa, 2003); Curry v. Regents of the Univ. of Minnesota, 167 F.3d 420, 422 (8th Cir. 1999). The test for standing requires that the litigant have suffered an injury in fact, be able to establish a causal relationship between the contested conduct and the alleged injury, and show that the injury would be redressed by a favorable decision. See, Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); Friends of the Boundary Waters Wilderness v. Thomas, 53 F.3d 881, 886 (8th Cir. 1995); Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds, 2006 WL 2092595, at *5 (D.S.D., July 26, 2006).

In its proposed Intervention Complaint, FHD alleges that it has been injured by Van Raden's allegedly discriminatory practices, in its efforts to eliminate housing discrimination, resolve fair housing disputes, and find rental housing that is free from discrimination and harassment. See, Proposed Intervention Complaint, Docket No. 9-2, at ¶21. It also alleges that Van Raden's actions have "caused the FHD to suffer economic losses in staff pay and in the inability to undertake other efforts to end unlawful housing practices." Id. In addition, in their Complaints, both FHD, and the Government specifically, allege that FHD is an aggrieved party, within the meaning

of the Act. See, Complaint, supra at ¶¶2, 24; Proposed Intervention Complaint, supra at ¶3.

It is well established that "[a] fair housing organization can satisfy the injury in fact requirement so long as it has 'devote[d] significant resources to identify and counteract a defendant's unlawful practices,' and has alleged distinct and palpable injuries that are 'fairly traceable' to the defendants' actions." North Dakota Fair Housing Council v. Allen, 319 F. Supp.2d 972, 976 (D.N.D. 2004), quoting Arkansas ACORN Fair Housing, Inc. v. Greystone Development, 160 F.3d 433, 434 (8th Cir. 1998); see also, Havens Realty Corporation v. Coleman, 455 U.S. 363, 379 (1982) (concluding that a fair housing organization has standing to sue under the Fair Housing Act, where it alleges that the defendant's discriminatory practices have frustrated the organization's purpose and resulted in a diversion of its resources).

Here, FHD has alleged an injury in fact, by way of its economic losses, and it has further alleged that its injury is traceable to Van Raden's alleged discriminatory conduct. See, Havens Realty Corporation v. Coleman, supra at 379 n. 20 ("That the alleged injury results from the organization's noneconomic interest in encouraging open housing does not effect the nature of the injury suffered, [Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 263 (1977)], and accordingly does not

deprive the organization of standing."); Arkansas ACORN Fair Housing, Inc. v. Greystone Development, Ltd. Co., supra at 434 ("[T]he deflection of an organization's monetary and human resources from counseling or educational programs to legal efforts aimed at combating discrimination, such as monitoring and investigation, is itself sufficient to constitute an actual injury[.]"). Such allegations are sufficient to demonstrate standing, because, at the pleadings stage, "allegations of injury are sufficient to invoke the jurisdiction of a court." Gwaltney of Smithfield v. Chesapeake Bay Foundation, Inc., 484 U.S. 49, 65 (1987); see also, North Dakota Fair Housing Council v. Allen, supra at 977 ("General factual allegations resulting from a defendant's conduct may suffice at the pleadings stage.").

In opposition to the Motion, Van Raden cites to North Dakota Fair Housing Council v. Allen, supra, in which the Court concluded that a fair housing organization lacked standing to sue under the Act. Id. at 975-976. There, the plaintiff organization alleged the same injuries which are alleged by the FHD in this action -- first, that "its ability [to carry] out its mission and serve the public was injured on account of the Defendants' discrimination," and second, that "it had suffered economic losses to the extent it had expended resources in its efforts to investigate and address the Defendants' unfair housing practices." Id. at 975. However, the Court granted

Summary Judgment to the defendant, because the organization's expenditure of resources was "consistent with the [Council's] stated purpose of educating and assisting the public, but [was] not clearly traceable to the Defendants' alleged misconduct." Id. at 978; see also, Arkansas ACORN Fair Housing, Inc. v. Greystone Development, Ltd. Co., supra at 435 ("Absent specific facts establishing distinct and palpable injuries **fairly traceable** to Greystone's [discriminatory] advertisements, ACORN cannot satisfy its burden at the summary judgment stage to establish the injury in fact requirement for standing under the FHA.")[emphasis in original].

However, both Allen, and Greystone, were decided by way of Summary Judgment, while this action has not progressed beyond the pleadings stage. Although Van Raden argues that FHD has not "devoted any significant resources in regard to the instant case," Defendants' Memorandum in Opposition, supra at p. 2, those facts are simply not before us, at this preliminary juncture. Because FHD has pled sufficient facts to demonstrate its standing under the Act, we grant its Motion to Intervene. See, Gwaltney of Smithfield v. Chesapeake Bay Foundation, Inc., supra at 65 ("A suit will not be dismissed for lack of standing if there are sufficient

'allegations of fact' -- not proof -- in the complaint or supporting affidavits."), quoting Warth v. Seldin, 422 U.S. 490, 501 (1975).[6]

NOW, THEREFORE, It is --

ORDERED:

That the Motion of Fair Housing of the Dakotas to Intervene as a Plaintiff [Docket No. 7] is GRANTED.

BY THE COURT:

Dated: February 2, 2009

s/Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

[6]As we observed at the Hearing, the fact that intervention is granted is not to say that both FHD, and the Government, will have an opportunity to present witnesses, or to cross examine the Defendants' witnesses. The Trial Court has the fundamental function of assuring fairness, and the absence of unnecessary replication in proofs. The same will have application to the question of briefing, as the Court need not read duplicative legal arguments simply because intervention has been granted.