Memo

Date: March 7, 2007

To: Barb Lelli, Investigator

From: John Gause, Commission Counsel

Re: [redacted] H06-0565

H06-0565

This case has been amended to substitute the name of Complainant from [redacted] to Pine Tree Legal Assistance (PTLA). You asked me whether I think that the amended complaint is timely. Also, I have looked at the issue of whether PTLA has standing.

I. Timeliness

Complainant alleges that [redacted] was denied housing on May 22, 2006. The original complaint was filed with the Commission within six months on November 1, 2006. The amended complaint [redacted] was filed outside of the six-month window on March 5, 2007. Nevertheless, the amendment is timely according to the "piggyback" doctrine, which holds that an untimely complaint will relate back to the date of an earlier, timely complaint if "(1) the relied upon charge [to which he is piggybacking] is not invalid, and (2) the individual claims of the filing and non-filing plaintiff [the named filing plaintiff and the piggybacking plaintiff] arise out of similar discriminatory treatment in the same time frame." *Hipp v. Liberty Nat. Life Ins. Co.*, 252 F.3d 1208, 1217 (11th Cir. 2001).

Here, both conditions are met. With respect to whether the original claim was valid, as was discussed in my January 30th memo to Pat, the original Complainant does not have to be a member of the protected class in order to have standing to bring the claim. Moreover, with respect to the issue of the scope of harm or injury necessary to establish tester standing, the Supreme Court has held that "the actual or threatened injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." *Havens Realty Corp. v. Coleman*, 102 S.Ct. 1114, 1121 (1982).

With respect to the legal right at issue, you pointed out that the Commission's regulation, § 8.04(A)(5), more appropriately refers to misrepresentation of the availability of a rental, which does not apply here. Complainant alleged facts that would violate other provisions, however, that similarly does not require Complainant to be a member of a protected class. *See* 5 M.R.S.A. § 4582 ("to discriminate against any individual

because of . . . familial status in the price, terms, conditions or privileges of the . . . rental or lease of any housing accommodations or in the furnishing of facilities or services in connection with any housing accommodations"); Me. Hum. Rights Comm'n Reg. § 8.04(C)(3) ("Failing to process an offer for the rental of a dwelling . . . because of . . . familial status"). Complainant alleges that Respondent placed an unlawful condition on the rental, namely, that a three-year old child could not live there. Moreover, although not explicitly alleged as such, the complaint could be interpreted to include alleged violations of other provisions that do not require Complainant to be a member of a protected class. *See* 5 M.R.S.A. § 4582 ("For any owner . . . to make or cause to be made any . . . oral inquiry concerning the . . . familial status of any prospective . . . tenant of the housing accommodation"); Me. Hum. Rights Comm'n Reg. §§ 8.04(F)(e) ("Providing false or inaccurate information regarding the availability of a dwelling for . . . rental to any person, including testers, regardless of whether such person is actually seeking housing, because of . . . familial status").

With respect to the similarity of the two claims, they are identical other than changing the name of Complainant and the allegation that [redacted] has suffered harm as a result of the discrimination. Accordingly, I think that the amended complaint is timely.

II. [redacted] Standing

I also think that [redacted] has standing to pursue the claim. In order for an organization to have standing to bring a claim on its own behalf, it must allege "a personal stake in the outcome of the controversy." *Havens Realty Corp.*, 102 S.Ct. at 1124. Such a showing can be made where an organization has had to divert resources to address the alleged discrimination. *See Ragin v. Harry Macklowe Real Estate Co.*, 6 F.3d 898, 905 (2nd Cir. 1993). *But see* Schwemm, Housing Discrimination Law and Litigation § 12A:5 (noting a split in the Circuits on whether a diversion of resources on a particular case alone is sufficient). In *Ragin*, the Second Circuit found the following facts sufficient:

> Here, the injury sustained by the OHC as a result of the defendants' advertisements was documented by the trial testimony of Ms. Phyllis Spiro, the deputy director of the OHC. Ms. Spiro testified that the services offered by the OHC included providing information at community seminars about how to fight housing discrimination. Spiro testified that she and her small staff devoted substantial blocks of time to investigating and attempting to remedy the defendants' advertisements. For example, Spiro detailed the steps she took to file the administrative complaint with the SDHR, including identifying the buildings' developers, the marketing agent and the advertising agent, as well as attending a conciliation conference. Spiro also testified that the time she and her coworkers spent on matters related to this case prevented them from devoting their time and

> energies to other OHC matters. Finally, Spiro testified that she personally devoted 150 to 200 hours working on this case after the Ragins filed their complaint in federal court.

Ragin, 6 F.3d at 905.

Here, the amended complaint alleges in general terms that its testing program for familial status cases (among others) "diverts its resources away from other areas of need." Although we will want to investigate the issue further to determine how this particular case has caused [redacted] injury, I think that the complaint is sufficient at this stage to state a claim.

Cc: Patricia E. Ryan, Executive Director