

SCHAC Administrative Interpretation 4

Subject: Fair Housing law violations may be alleged against anyone or any entity that directly participates in the discrimination, and includes any associations that allegedly engage in a discriminatory housing practice.

Summary: The Commission has determined that Home Owner's Associations, Property Owners' Associations and individual Board Members of these types of entities are not immune to liability under the South Carolina Fair Housing Law, since the definition of "persons" includes individuals and associations. Furthermore, this definition is supported by Department of Housing and Urban Development (hereinafter "HUD") Guidance, as well as various interpretations from multiple cases such as *Falin v. Condominium Ass'n of La Mer Estate, Inc.*, No. 11-61903-CV, at *3 (S.D. Fla. Nov 9, 2011) and *Fielder v. Sterling Park Homeowners Ass'n*, 914 F. Supp.2d 1222 (W.D. Wash. 2012).

Discussion: Home Owner's Associations, Property Owners' Associations, and Individual Board Members of these types of entities qualify as "Persons" under the South Carolina statute and therefore can be held liable for violations of housing discrimination and other discriminatory practices. The plain reading of the statute supports this determination.

Additionally, guidance from HUD related to processing Fair Housing investigations explains that "If a corporate respondent operates under the control of a Board of Directors, the corporation must be named as a respondent. The individual members of the Board should not be named as respondents, **unless the facts presented during intake allege that these board members directly participated in the alleged discriminatory housing practice.**" Title VIII Complaint Intake, Investigation, and Conciliation Handbook, (8024.1) at 4-7. This plain reading of HUD

guidance establishes when it is appropriate for individual board members to be held responsible for Fair Housing law violations.

HUD's guidance is supported by case law. For example, in *Sabal Palm Condominiums of Pine Island Ridge Ass'n v. Fischer*, 6 F.Supp.3d 1272 (2014), the United States District Court (S.D. Florida), held that individual board members or agents such as property managers can be held liable if they have "personally committed or contributed to a Fair Housing Act violation."

(citing: *Falin v. Condominium Association of La Mer Estates, Inc.*, 2011 WL5508654, at *3(S.D. Fla. Nov. 9, 2011)). In contrast, if an individual has no authority to vote or did not in fact vote on the discriminatory action, then he or she cannot be held liable for the violation. For example, in *Sable* above, the association's attorney was held not to be liable for the discriminatory act demonstrated to the aggrieved parties. Though the attorney was involved in the housing transaction, he did not willfully violate any fair housing laws and therefore was not liable for the violation. See *Sabal Palm Condominiums of Pine Island Ridge Ass'n v. Fischer*, 6 F.Supp.3d at 1294. In *City of Chicago v. Matchmaker Real Estate Sales Center, Inc.*, 982 F.2d 1086, 1100 (7th Cir. 1992), the court stated a principal would be liable for punitive damages for the discriminatory acts of her agent only if she knew or ratified the acts (quoting *Hamilton v. Svatik*, 779 F.2d 383(7th Cir. 1985)). In *Fielder v. Sterling Park Homeowners Ass'n*, 914 F.Supp.2d 1222 (2012), the court held that directors are not immunized from liability when they fail to exercise to proper care, skill, and diligence. (Citing: *Shinn v. Thurst IV, Inc.*, 56 Wash. App. 827, 834-35, 786 P.2d 285, 290 (1990)).

Based on the plain meaning of the state statute, HUD Guidance, and relevant case law, the Commission asserts that Home Owner's Associations, Property Owners Associations, and

Individual Board Member of these types of entities can be held liable as “Persons” under S.C. Code Ann. §31-21-30(9).

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