


# Memo

Date: January 30, 2007  
To: Patricia Ryan, Executive Director  
From: John Gause, Commission Counsel  
Re:   
H06-0565

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I think that this case should not be administratively dismissed. (Apologies to Barb for changing my mind on this one.)

The issue is whether Complainant must be a member of the protected class (familial status) in order to have standing to bring a claim for unlawful representation that a dwelling is not available on the basis of familial status. I do not think that membership in the protected class is required here.

A similar issue came up last year with respect to a housing discrimination claim based on the receipt of public assistance. There, we decided that a person must be a recipient of public assistance in order to have standing. The statutory and regulatory provisions dealing with familial status and public assistance discrimination are different, however. The public assistance provision states that it is unlawful for "any person furnishing rental premises or public accommodations to refuse to rent or impose different terms of tenancy to any individual who is a recipient of federal, state or local public assistance. . . ." 5 M.R.S.A. § 4582 (emphasis added). By its express terms, a person bringing a claim under this provision must be a recipient of public assistance.

The Commission regulation addressing representations regarding the availability of a dwelling based on familial status, however, is worded more broadly and does not require that complainants be members of a protected class: "It shall be unlawful to . . . [r]epresent to any person because of . . . familial status . . . that a dwelling is not available for sale or rental when such dwelling is in fact available. . . ." Me. Hum. Rights Comm'n Reg. § 8.04(A)(5). The MHRA provision describing who may file complaints with the Commission similarly does not require membership in a protected class: "Any person who believes that the person has been subject to unlawful discrimination, or any employee of the commission, may file a complaint under oath with the commission. . . ." 5 M.R.S.A. § 4611.

Other provisions in the Act and our regulations address discrimination based on protected-class status when complainant is not a member of a protected class. *See, e.g.*, 5 M.R.S.A. § 4553 (2)(D) (discrimination against an employee based on his or her "association" with a person with a disability); 5 M.R.S.A. § 4553(7-B)(C) ("regarded as" being a person with a disability); 5 M.R.S.A. § 4553 (9-C) ("perceived" sexual orientation); Me. Hum. Rights Comm'n Reg. § 8.06(A)(1)(c) (discrimination against a buyer or renter because of the disability of a person "associated with" the buyer or renter). The Fair Housing Act has been extended to cover individuals who are not members

of a protected class. *See, e.g., Gorski v. Troy*, 929 F.2d 1183, 1188, (7<sup>th</sup> Cir. 1991) (tenants seeking to become foster parents). *But see Wilson v. Glenwood Intermountain Properties*, 876 F.Supp. 1231, 1239 (D.Utah 1995) (no standing for housing applicant who did not have children but represented that he did).

I think, reading the Act broadly, the housing regulation at issue should extend to complainants who are incorrectly regarded as having children under 18 living in the home.

Cc: Barb Lelli