

Memo

Date: February 9, 2006
To: Barb Lelli, Investigator
From: John Gause, Commission Counsel
Re: ~~REDACTED~~
HOS-0560
Cc: Patricia Ryan, Executive Director

I understand that you have spoken with Complainants' counsel, and neither Complainant received public housing assistance at the time that they inquired about Respondents' apartment. Accordingly, I do not think that Complainants have standing to pursue their claims before the Commission, and the complaint should be dismissed (after they are given an opportunity in writing to show that they do receive public assistance).

The MHRA states that "[a]ny 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 (emphasis added). Accordingly, in order to have standing before the Commission, the person filing the complaint must believe that she has been subject to unlawful discrimination.

The applicable provision of the MHRA provides that it is unlawful housing discrimination "[f]or 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, including medical assistance and housing subsidies primarily because of the individual's status as recipient." 5 M.R.S.A. § 4582 (emphasis added). Therefore, a person bringing a claim under this provision must be a recipient of public assistance.

Because neither Complainant received public assistance, they are not protected by § 4582 (or any other provision in the MHRA), and they lack standing to pursue the complaint. *See Ricci v. Superintendent, Bureau of Banking*, 485 A.2d 645, 647 (Me. 1984) (construing APA provision, "any person who is aggrieved by final agency action"). *Compare Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-374 (U.S. 1982) (recognizing standing under the FHA, 42 U.S.C. § 3604(d), where the section applies to "any person," without limitation).

Nevertheless, because there is some ambiguity in the complaint about whether Complainants do receive public assistance ("We believe that we were discriminated against because in our role as testers we were recipients of public assistance"), before administratively dismissing the complaint, we should invite Complainants to amend the charge, if they are able to do so, to specifically state that they did receive public assistance. *See Warth v. Seldin*, 422 U.S. 490, 502 (U.S. 1975). If they are unable to so amend the charge, we should administratively dismiss it for lack of jurisdiction.