Memo

Date: November 10, 2005

To: Barbara Lelli, Investigator

From: John Gause, Commission Counsel

Re: [redacted] H05-0472

Barb,

To answer your question, I believe that [redacted] is a proper Respondent.

First, I do not think that the fact that [redacted] is not subject to the housing discrimination section of the MHRA, 5 M.R.S.A. § 4582, will preclude his being covered by the anti-interference section, 5 M.R.S.A. § 4633(2).

As you point out, the Maine Human Rights Act prohibits a "person" from interfering with an individual's enjoyment of rights protected by the MHRA:

> It is unlawful for a person to coerce, intimidate, threaten or interfere with any individual in the exercise or enjoyment of the rights granted or protected by this Act or because that individual has exercised or enjoyed, or has aided or encouraged another individual in the exercise or enjoyment of, those rights.

5 M.R.S.A. § 4633(2) (emphasis added).

The MHRA defines "person" as follows:

> "Person" includes one or more individuals, partnerships, associations, organizations, corporations, municipal corporations, legal representatives, trustees, trustees in bankruptcy, receivers and other legal representatives, and includes the State and all agencies thereof.

5 M.R.S.A. § 4553(7) (emphasis added).

Nothing in the Act limits the term "person" referenced in § 4633 to people covered by the anti-discrimination subchapters, i.e., employment, housing, public accommodations, fair credit, and education.

Moreover, federal case authority interpreting analogous anti-interference provisions in the Fair Housing Act and the Americans with Disabilities Act have applied those provisions to defendants who are not necessarily otherwise subject to the FHA or the ADA. *See, e.g., East-Miller v. Lake County Highway Dep't*, 421 F.3d 558 (7th Cir. 2005) (highway department that plowed the roads in front of plaintiff's home); *King v. Metcalf 56 Homes Ass'n*, 385 F. Supp. 2d 1137 (D.Kan. 2005) (neighbor); *Walton v. Claybridge Homeowners Assoc.*, 2004 U.S. Dist. LEXIS 946 (S.D. Ind. 2004) (various individuals); *United States v. Pospisil*, 2000 U.S. Dist. LEXIS 21685 (W.D. Miss. 2000) (individuals with no apparent connection to housing provider); *Shotz v. City of Plantation Florida*, 14 AD Cases 1395, 1407-08 (11th Cir. 2003) (anti-interference section in ADA applies to individuals in the public services context). *But see Van Hulle v. Pacific Telesis Corp.*, 124 F.Supp.2d 642, 645, 11 AD Cases 557 (N.D. Cal. 2000) (anti-interference section in ADA does not apply to individuals in the employment context because individuals cannot be held liable for money damages under Title I remedial scheme).

Because § 4633 refers to "person" that is not otherwise limited, and because it would be consistent with the remainder of the MHRA, [redacted] is a proper Respondent despite the fact that he is not covered by § 4682.

Second, on its face, the charge against [redacted] states a claim of unlawful interference in violation of the MHRA.

Our housing regulation interprets § 4633(2) to make the following unlawful:

> Threatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, national origin, ancestry, familial status, or physical or mental disability of such persons, or of visitors or associates of such persons.

Me. Hum. Rights Comm'n, 94-348 CMR ch. 8, § 8.09(B)(2) (July 17, 1999).

This provision is identical to the HUD regulation, 24 C.F.R. 100.400(c)(2), which interprets the nearly identical anti-interference section of the FHA, 42 U.S.C. § 3617. The HUD regulation has been applied to harassment-type cases. *See, e.g., Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d 327, 330 (7th Cir. 2004); *King v. Metcalf 56 Homes Ass'n*, 385 F. Supp. 2d 1137.

No clear standard has emerged with respect to the degree of racial hostility that must be shown to state an interference claim, although all of the cases that I found require that it be substantial in one way or another. In *Lawrence v. Courtyards at Deerwood Association*, 318 F.Supp 2d 1133, 1145 (S.D. Fl. 2004), the court (citing cases involving cross burnings, guns, and explosive devices) adopted a standard that "the discriminatory conduct must be pervasive and severe enough to be considered as threatening or violent." The Seventh Circuit Court of Appeals, however, held that "there are other, less violent [than burning a cross or assaulting a neighbor] but still effective, methods by which a person can be driven from his home and thus

'interfered' with in his enjoyment of it." *Halprin v. Prairie Single Family Homes of Dearborn Park Ass'n*, 388 F.3d at 330 (citing cases of sexual harassment and economic pressure and finding it significant in the case before the court that there was a "pattern of harassment" that was backed by the homeowners association). In *King v. Metcalf 56 Homes Ass'n*, 385 F. Supp. 2d at 1144, the court appeared to adopt an even broader view of § 3617, holding that a neighbor's monitoring of plaintiff and falsely reporting her to the county housing authority to attempt to have her subsidized housing revoked constituted "a severe and pervasive pattern of harassing plaintiff that was designed to interfere with plaintiff's enjoyment of her dwelling." In *Walton v. Claybridge Homeowners Assoc.*, 2004 U.S. Dist. LEXIS 946 at *18 (thanks for showing me this case), the court held that § 3617 is not limited to extraordinarily violent acts like cross burnings, and "was intended to cover a broad range of discriminatory conduct associated with the exercise of housing rights." Despite this generous language, there were threats from contractors hired by defendants in *Walton*, and plaintiff received a call stating, "if you continue to fight [the legal action], you'll be dead before it's over." *Id.* at *22-23.

For present purposes, I believe the conduct Mr. [redacted] attributes to Mr. [redacted]—i.e., constant harassment, calling [redacted] kids "porch monkeys," calling [redacted] son [redacted] "slave," monitoring [redacted] and his family, calling [redacted] "black boy" and "nigger boy", calling "hey coon" out of his window, blocking [redacted] in his driveway—is sufficient to avoid a dismissal at this stage of the proceeding in that it constitutes "interfering with persons in their enjoyment of a dwelling because of . . . race." Me. Hum. Rights Comm'n, 94-348 CMR ch. 8, § 8.09(B)(2); *King v. Metcalf 56 Homes Ass'n*, 385 F. Supp. 2d at 1144.

Cc: Patricia Ryan, Executive Director