

SUPREME COURT OF MISSOURI

Kansas City Premier Apartments, Inc. v. Missouri Real Estate Commission

344 S.W.3d 160 (Mo. banc 2011) · No. SC 91125 · Decided July 19, 2011

SUMMARY

The Supreme Court of Missouri affirmed an injunction prohibiting Kansas City Premier Apartments, Inc. from performing activities requiring a real estate license under chapter 339. The court held that the company’s referral, marketing, and rental-advisor activities were not covered by the statutory exemption for persons retained to manage real property. It rejected the company’s constitutional challenges based on free speech, equal protection, special-law, and vagueness provisions.

CASE DETAILS

COURT	Supreme Court of Missouri
WRITING FOR THE COURT	Zel M. Fischer; Richard B. Teitelman; William Ray Price Jr.; Laura Denvir Stith; Patricia Breckenridge; George W. Draper III; Michael A. Wolff
JURISDICTION	Missouri
DECIDED	July 19, 2011
DOCKET	SC 91125
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kansas City Premier Apartments, Inc. appealed an injunction entered by the trial court that found it was violating Missouri's real-estate-licensing statute and barred it from performing activities requiring a real estate license. The appeal included constitutional challenges to the statutory provisions, giving the Supreme Court of Missouri exclusive jurisdiction.
STANDARD OF REVIEW	The judgment was reviewed under <i>Murphy v. Carron</i> for substantial evidence, weight of the evidence, erroneous declaration of law, or erroneous application of law. Constitutional challenges were reviewed de novo. The statutory classification was reviewed under rational-basis review, and the commercial-speech challenge under the intermediate-scrutiny framework of <i>Central Hudson</i> .
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

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QUESTIONS PRESENTED

1. Whether KCPA's activities constituted real-estate brokerage activities requiring licensure under section 339.010.1.
2. Whether KCPA qualified for the property-management exemption in section 339.010.7(5).
3. Whether the challenged provisions violated the First Amendment or article I, section 8, of the Missouri Constitution by regulating protected commercial speech.
4. Whether section 339.010.7 violated federal or state equal-protection guarantees.
5. Whether section 339.010.7 was an unconstitutional special law under article III, section 40(30), of the Missouri Constitution.
6. Whether the challenged provisions were unconstitutionally vague in violation of due process.

HOLDINGS

1. KCPA's compensated referral, marketing, recommendation, and advisory activities fell within the statutory definition of real-estate brokerage activities requiring a license.
2. KCPA did not qualify for the exemption because its activities were not limited to the enumerated property-management activities.
3. The challenged provisions did not violate the First Amendment or article I, section 8, of the Missouri Constitution.
4. Section 339.010.7 did not violate the Equal Protection Clause or article I, section 2, of the Missouri Constitution.
5. Section 339.010.7 was not a special law prohibited by article III, section 40(30), of the Missouri Constitution.
6. The challenged provisions were not unconstitutionally vague.

KEY QUOTATIONS

"KCPA's activities are not limited enough to fit under this exemption." (165)

"Because the challenged provisions survive immediate scrutiny, they do not violate KCPA's freedom of speech and are not unconstitutional." (169)

“These statutes gave KCPA adequate notice that it was acting in violation of chapter 339 by assisting and directing in the procuring of prospects for rental.” (172)

FACTUAL BACKGROUND

KCPA operated a website listing rental properties and entered performance-based agreements with property owners, receiving a fee when a referred prospect rented a property. KCPA also offered rental advisors who answered questions, recommended properties based on prospects' needs, and contacted property owners to arrange appointments; approximately 80 percent of prospects used the advisors. Neither KCPA's founders nor its advisors held Missouri real-estate brokerage licenses. After investigating KCPA, the Missouri Real Estate Commission concluded that KCPA was operating as an unlicensed real-estate broker.

PROCEDURAL HISTORY

KCPA initially sought declaratory relief after the Missouri Real Estate Commission informed it that it was operating as an unlicensed real estate broker. The Commission later filed a petition for a preliminary injunction, and the actions were consolidated and tried in 2010. The trial court entered an injunction, prohibited KCPA from referring prospective tenants for compensation and performing acts requiring licensure, prohibited rebate cards, and denied declaratory relief. The Supreme Court of Missouri affirmed.

DISPOSITION

affirmed

CASES CITED

- *Murphy v. Carron*, 536 S.W.2d 30 (Mo. banc 1976)
- *In re Coffman*, 225 S.W.3d 439, 444 (Mo. banc 2007)
- *Howard v. City of Kansas City*, 332 S.W.3d 772, 779 (Mo. banc 2011)
- *Brinker Missouri, Inc. v. Director of Revenue*, 319 S.W.3d 433, 437 (Mo. banc 2010)
- *Miller Nationwide Real Estate Corp. v. Sikeston Motel Corp.*, 418 S.W.2d 173, 176-77 (Mo. 1967)
- *In re Brasch*, 332 S.W.3d 115, 119 (Mo. banc 2011)
- *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978)
- *National Ass'n for the Advancement of Psychoanalysis v. California Board of Psychology*, 228 F.3d 1043 (9th Cir. 2000)
- *Underhill Associates, Inc. v. Bradshaw*, 674 F.2d 293 (4th Cir. 1982)
- *Accountant's Society of Virginia v. Bowman*, 860 F.2d 602 (4th Cir. 1988)
- *Locke v. Shore*, 634 F.3d 1185 (11th Cir. 2011)
- *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976)
- *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980)
- *Missouri Libertarian Party v. Conger*, 88 S.W.3d 446 (Mo. banc 2002)
- *Committee for Educational Equality v. State*, 294 S.W.3d 477 (Mo. banc 2009)

- FCC v. Beach Communications, Inc., 508 U.S. 307 (1993)
- Pettitt v. Field, 341 S.W.2d 106 (Mo. banc 1960)
- City of Springfield v. Sprint Spectrum, L.P., 203 S.W.3d 177 (Mo. banc 2006)
- Smith v. Goguen, 415 U.S. 566 (1974)
- State v. Entertainment Ventures I, Inc., 44 S.W.3d 383 (Mo. banc 2001)
- State v. Williams, 473 S.W.2d 382 (Mo. banc 1971)
- Goerlitz v. City of Maryville, 333 S.W.3d 450 (Mo. banc 2011)
- Doe v. Phillips, 194 S.W.3d 833, 841 (Mo. banc 2006)
- City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410 (1993)
- Sorrell v. IMS Health Inc., 564 U.S. 552, 131 S. Ct. 2653 (2011)

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