

MASSACHUSETTS SUPREME JUDICIAL COURT

DiLiddo v. Oxford Street Realty, Inc.

450 Mass. 66 (2007) · Decided November 15, 2007

SUMMARY

The Massachusetts Supreme Judicial Court held that a one-month lease-termination provision in the Alternative Housing Voucher Program lease was a requirement of the subsidy program under G. L. c. 151B, § 4 (10). A landlord’s refusal to accept the provision for purported economic reasons therefore constituted unlawful discrimination against a housing subsidy recipient, and reliance on advice of counsel was not a defense. The court reversed the denial of the plaintiff’s partial summary-judgment motion, vacated summary judgment for the defendants, and remanded for entry of judgment on liability and further proceedings.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Marshall, C.J.
JURISDICTION	Massachusetts
DECIDED	November 15, 2007
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed from the Superior Court's allowance of the defendants' cross motion for summary judgment and denial of the plaintiff's motion for partial summary judgment in an action alleging housing discrimination under G. L. c. 151B, § 4 (10). The Massachusetts Supreme Judicial Court transferred the appeal from the Appeals Court on its own motion.
STANDARD OF REVIEW	Summary judgment is reviewed by determining whether, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	Published Massachusetts Supreme Judicial Court opinion; binding precedent in Massachusetts.
PARTIES	Lori DiLiddo v. Oxford Street Realty, Inc., Jeffrey W. Indeck

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the one-month termination provision in the AHVP standard form lease was a requirement of the AHVP for purposes of G. L. c. 151B, § 4 (10).
2. Whether a landlord may refuse to accept a housing subsidy program requirement because the landlord considers it economically disadvantageous or has a legitimate, nondiscriminatory reason for doing so.
3. Whether a landlord's agent may be liable under G. L. c. 151B, § 4 (10) and § 4 (5) when the agent participates in selecting tenants and refuses to sign the required subsidy-program lease.
4. Whether reliance on advice of counsel is a defense to liability under G. L. c. 151B, § 4 (10).

HOLDINGS

1. The one-month termination provision in the AHVP standard form lease was a requirement of the Alternative Housing Voucher Program because the Department of Housing and Community Development required participating landlords and tenants to use the lease to implement the program.
2. A landlord may not refuse to rent to a housing subsidy recipient because the landlord objects to a requirement of the subsidy program for economic reasons, even if the landlord acts without discriminatory animus or in good faith.
3. Oxford and Indeck could be held liable because they participated in locating, interviewing, and choosing tenants and therefore at minimum aided or abetted the discriminatory refusal.
4. Reliance on advice of counsel is not a defense to a claim under G. L. c. 151B, § 4 (10), because that provision does not require a willful or intentional violation.

KEY QUOTATIONS

“We further conclude that, where the Legislature has exercised its authority to set the balance between the protection of landlords’ interests and the need for affordable housing, the defendants’ refusal to agree to the provision violated the strictures of G. L. c. 151B, § 4 (10).” (450 Mass. at 68)

“General Laws c. 151B, § 4 (10), in contrast, does not require that a landlord wilfully or intentionally violate the law. Advice of counsel is not a defense to a claim under that statutory provision.” (450 Mass. at 80)

FACTUAL BACKGROUND

DiLiddo, who became disabled after an automobile accident, received an Alternative Housing Voucher Program (AHVP) voucher from the Cambridge Housing Authority. Oxford Street Realty, acting as property manager and leasing agent, offered her an apartment while knowing she intended to use the voucher. After reviewing the AHVP form lease, Oxford's principal, Jeffrey Indeck, objected to provisions allowing termination on one month's notice when a tenant obtained other subsidized or suitable permanent housing, and refused to sign the

AHVP lease, although he stated that Oxford would rent to DiLiddo under a regular lease. DiLiddo was unable to use her voucher for the apartment and incurred costs while finding other housing.

PROCEDURAL HISTORY

After DiLiddo filed a discrimination complaint with the Cambridge human rights commission and the Massachusetts Commission Against Discrimination, MCAD found probable cause against Oxford. The Commonwealth commenced a Superior Court action, and DiLiddo intervened as of right. The Superior Court granted summary judgment to the defendants, concluding that the challenged AHVP lease provisions were not program requirements and, alternatively, that the defendants had legitimate nondiscriminatory reasons and relied on advice of counsel. The Supreme Judicial Court reversed the denial of DiLiddo's partial-summary-judgment motion, vacated the defendants' judgment, and remanded for entry of judgment for DiLiddo on liability and further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter judgment in favor of DiLiddo as to liability and conduct further proceedings consistent with the opinion.

CASES CITED

- Glasser v. Director of the Div. of Employment Sec., 393 Mass. 574, 577
- Bronstein v. Prudential Ins. Co., 390 Mass. 701, 704
- Atlanticare Med. Ctr. v. Commissioner of the Div. of Med. Assistance, 439 Mass. 1, 5
- Tarin v. Commissioner of the Div. of Med. Assistance, 424 Mass. 743, 750
- Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991)
- Yakubowicz v. Paramount Pictures Corp., 404 Mass. 624, 626 (1989)
- Liberty Mut. Ins. Co. v. Commissioner of Ins., 395 Mass. 765, 771
- Attorney Gen. v. Brown, 400 Mass. 826, 832-835 (1987)
- State Bd. of Retirement v. Boston Retirement Bd., 391 Mass. 92, 94
- Ruffino v. State St. Bank & Trust Co., 908 F. Supp. 1019, 1048 (D. Mass. 1995)
- Higgins v. Pratt, 316 Mass. 700, 713 (1944)
- G.S. Enters., Inc. v. Falmouth Marine, Inc., 410 Mass. 262, 269 (1991)
- United States v. Powell, 513 F.2d 1249, 1251 (8th Cir. 1975)
- Bynes v. School Comm. of Boston, 411 Mass. 264, 269
- Rock v. Massachusetts Comm'n Against Discrimination, 384 Mass. 198, 204
- Hogan vs. Gaipo, MCAD No. 98-BPR-2756 (March 13, 2002)

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