

Time Limitation for Filing Complaint

Legal Opinion: GME-0004

Index: 9.220
Subject: Time Limitation for Filing Complaint

November 18, 1991

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Suite 800
55 Waugh Drive
Houston, TX 77007

Re: Simms v. First Gibraltar Bank
HUD Case No. 06-90-0095-1

Dear Mr. Lawrence:

Secretary Kemp has requested that I respond to your October 24, 1991 letter concerning the above-referenced fair housing case, in which you represent the complainant Gordon D. Simms. In that case the Department of Housing and Urban Development (HUD) issued an October 25, 1990 Determination of No Reasonable Cause and dismissed Mr. Simms' complaint of housing discrimination against First Gibraltar Bank.

Your letter's opening paragraph requests that HUD accept your letter and its enclosures "as a refiling" of Mr. Simms' complaint. Your letter's closing paragraph requests that HUD "reopen" the complaint and provide you with unspecified "statements and documents" under the Freedom of Information Act (FOIA). 5 U.S.C. 552.

Neither the Fair Housing Act (Act) nor HUD's regulations provide for HUD reopening a case where it has issued a determination of no reasonable cause and dismissed the case. See 42 U.S.C. 3610(g)(3); 24 C.F.R. 103.400(a)(1) (1991); 24 C.F.R. Subtitle B, Ch. I, Subch. A, App. I at 735 (1991). In addition, Congress has issued a clear mandate that HUD investigate and otherwise process fair housing complaints promptly. See 42 U.S.C. 3610(g)(1). See also 24 C.F.R.

103.400(c) (1991). In light of that mandate, it would be imprudent for HUD to reopen Mr. Simms' complaint based on your letter, which you sent to HUD two days short of a year after HUD had dismissed the complaint. Accordingly, HUD denies the request made in your letter's final paragraph to reopen Mr. Simms' complaint.

That HUD will not reopen Mr. Simms' complaint, however, does not preclude him from refiling his complaint based on newly discovered or previously unavailable information, as your

letter's opening paragraph requests, provided the one-year time limit for filing a complaint is met. 24 C.F.R. Subtitle B, Ch. I, Subch. A, App. I at 735 (1991). Since HUD's Fair Housing and Equal Opportunity (FHEO) regional offices are responsible for accepting complaints of housing discrimination, I have instructed my staff to forward your letter and its enclosures to FHEO's Intake Division in HUD's Region VI office in Fort Worth for appropriate action on your letter's refiling request.*

With respect to your letter's FOIA request, please be advised that HUD's FOIA regulations are found at 24 C.F.R. Part 15. Both FOIA and HUD's regulations require that a person seeking HUD records submit a request that "reasonably describes" the records sought. 5 U.S.C. 552(a)(3); 24 C.F.R. 15.13(b) (1991). Your letter does not reasonably describe the records you seek. Should you still wish to obtain HUD records, please submit a request that reasonably describes those records to the appropriate HUD office. 24 C.F.R. 15.31 (1991).

I hope that this response will assist your client and you. If you believe my office may be of further assistance, please do not hesitate to contact Harry L. Carey, Assistant General Counsel for Fair Housing.

Very sincerely yours,

Frank Keating
General Counsel

cc:
FHEO, Region VI

* In all candor, FHEO likely will not accept your letter for refiling because it probably has been more than one year since the alleged act(s) of discrimination occurred (this might not be so if the acts are of a continuing nature). On the other hand, the Act provides that, notwithstanding HUD's dismissal of Mr. Simms' complaint, he may file a civil action in an appropriate federal district court or state court within two years after the occurrence or termination of the alleged discriminatory housing practice. 42 U.S.C. 3613(a)(1). The computation of this two-year period does not include the time during which Mr. Simms' complaint was pending before HUD. 42 U.S.C. 3613(a)(1)(B).