

United States of America
Department of Housing and Urban Development
Office of the Secretary

The Secretary, United States
Department of Housing and
Urban Development, on behalf of
MELISSA D. GARRETT, JAMAAL
KING, AMANDA GARRETT,
CHRISTOPHER DOSS (A/K/A
TOMMY DOSS) AND THREE
MINOR CHILDREN,

Charging Party,

v.

PHILLIP MAZE AND OPAL
MAZE,

Respondents.

HUDALJ:
10-M-015-FH4

For the Complainants: Kathleen M. Pennington, Sylloris Lampkin, and Melissa Anderson, U.S.
Dept. of Housing and Urban Development

For the Respondents: Clint L. Maze, Attorney, Arab, Alabama

SECOND ORDER ON SECRETARIAL REVIEW

Background and Facts

On February 25, 2011, the Secretary issued an Order on Secretary Review in which he found that Administrative Law Judge (ALJ) J. Jeremiah Mahoney's "finding that an agency relationship did not exist between Respondents Phillip and Opal Maze and that Respondent Opal Maze is not vicariously liable for Respondent Phillip Maze's illegal actions is contrary to the law and the facts." Order on Secretarial Review at 4. The Secretary also held that the evidence showed that Respondent Phillip Maze was an agent of Opal Maze "by virtue of the fact that Kenneth Maze, having the power of

attorney for his mother, delegated to Respondent Phillip Maze the authority to act as Respondent Opal Maze's agent for maintaining, managing, renting, and leasing her rental properties" and Opal Maze was vicariously liable for Respondent Phillip Maze's discriminatory acts. *Id.* at 7.

The Secretary further concluded that "the ALJ's legal conclusion with respect to emotional distress damages is contrary to law." *Id.* at 6. Finally, the Secretary "set aside all the [Initial Decision's] factual findings and conclusions of law that are inconsistent with this Order on Secretarial Review," and remanded the case to the ALJ to enter an Initial Decision on Remand "consistent with this Order on Secretarial Review." *Id.* at 7.

Initial Decision on Remand

On April 16, 2011, the ALJ issued an Initial Decision Upon Remand. The ALJ found that: (1) Respondent Phillip Maze was delegated by Respondent Opal Maze's attorney-in-fact to act as her agent with regard to the rental of the mobile home to the Complainants; (2) because Respondent Phillip Maze was Opal Maze's agent, both were entitled to the Act's exemption for owners and thus had no liability under subsections 804(a) and (b) of the Act, 42 U.S.C. § 3604(a)-(c); and (3) the amounts he had previously awarded for emotional distress and out-of-pocket expenses were correct.

In the ALJ's Initial Decision, the ALJ concluded that he did not need to discuss the applicability of the exemption to Respondent Phillip Maze because he found that Phillip Maze was one of the owners of the mobile home, and not acting for the owner. In addition, in the Initial Decision, the ALJ held that the statutory exemption was not applicable to Opal Maze. Initial Decision at 10. However, in the Initial Decision on Remand, the ALJ *sua sponte* held that, because Respondent Phillip Maze was the owner's agent, he stands in the shoes of the owner and thus, both Respondents Phillip Maze and Opal Maze may use the owners' exception. Initial Decision on Remand at 7. He also determined that Respondent Phillip Maze did not meet the definition of a person in the "business of selling or renting dwellings." *Id.*

Charging Party's Petition for Secretarial Review of Initial Decision Upon Remand

The General Counsel asserts that the ALJ erred in finding that, because the Secretary in his prior decision remanding this case to the ALJ, had found Respondent Phillip Maze, Respondent Opal Maze's son, to have been serving as Opal Maze's delegated agent, "the Court is constrained to reverse its previous assessment of the applicability of the 'owners' exception. . ." Initial Decision on Remand at 7.

In addition, the General Counsel contends that, because the ALJ erroneously found that Respondents met the owners' exception, he also wrongly held that they were not liable for violating subsections 804(a) – (b) of the Act. Finally, the General Counsel argues that, because the ALJ erroneously found that Respondents met the owners' exception, he also wrongly held that they were not liable for violating subsections 804(a) – (b) of the Act.

Respondents' Opposition to Charging Party's Petition for Secretarial Review of Initial Decision Upon Remand

The Respondents contend that the ALJ correctly held that the owners' exemption applies to Respondent Opal Maze because: (1) she owns only three single-family dwellings; (2) the property in

issue was not advertised for rent in any newspaper publication, online posting or real estate guide; and (3) no services of any real estate agent or real estate brokerage firm were ever used to market any of the real properties owned by Respondent Opal Maze for rent or sale. Specifically, the Respondents assert that, as defined by the Act, Respondent Phillip Maze: (1) was not a real estate agent and was not in the business of renting dwellings; (2) did not engage in "rental services in two or more transactions" within the preceding twelve months; and (3) engaged in "rental services" only with respect to the subject property.

Conclusion

Under the "owners exception," the Act exempts from its coverage (other than subsection 804 (c) and § 818) a single-family home sold or rented by an owner who: (1) does not own more than three single-family houses at any one time; (2) does not "use in any manner ... the sales or rental services of any real estate broker, agent, or salesman, or ... person in the business of selling or renting dwellings;" and (3) does not advertise the housing in violation of subsection 3604 (c). (Emphasis added.) Only the second factor is relevant here because Respondent Opal Maze did not own more than three single-family houses and did not advertise the housing.

If a housing provider who would otherwise be exempt under subsection 803(b)(1) uses an agent for "any matter related to the sale or rental of dwellings," that housing provider forfeits any claim to the exemption. A person is "in the business of selling or renting dwellings if he has, within the prior twelve months, acted as agent, other than in the sale of his own personal residence in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein." 42 U.S.C. § 3603(c)(2).

The Fair Housing Act regulations define an agent generally as "any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations or contracts and the administration of matters regarding such offers, solicitations or contracts or any residential real estate-related transactions." 24 C.F.R. § 100.20. The regulation does not mandate that the agent be licensed or certified or be another "professional." Thus, the use of any agent causes the transaction in question to come under the Act's coverage.

Applying these principles to this case, Respondent Phillip Maze was in the business of renting houses. The Act states that the "person in the business" must act as an agent in supplying "rental services in two or more transactions" within the prior twelve months. *See* 42 U.S.C. § 3603(b)(1); 42 U.S.C. § 3603(c)(2). I find that Respondent Phillip Maze clearly meets the Act's definition. Thus, in the course of twelve months, he: (1) actively managed Respondent Opal Maze's rental properties (*see* Order on Secretarial Review at 4-5); and (2) engaged in "rental services," including entering into rental agreements, collecting rent and security deposits from tenants, providing and paying for water service for the trailers, maintaining the trailers, and completing repairs on the properties (*Id.*).

Nor, as found by the ALJ in the Initial Decision on Remand, because Respondent Phillip Maze is the agent of the owner, Respondent Opal Maze, does he stand in Respondent Opal Maze's shoes. As

I found in remanding the case in the Order on Secretarial Review, Kenneth Maze had the Power of Attorney to act in the owner's shoes, and Respondent Phillip Maze was Kenneth Maze's agent (the owner's subagent). See Order on Secretarial Review at 6. There is no evidence that Respondent Phillip Maze possesses any ownership interest in the property, and thus, he is not entitled to the exemption. Nor is Respondent Opal Maze entitled to the exemption because, through her Power Of Attorney, she used an agent. Id. at 6-7.

Accordingly, the ALJ is incorrect in finding that Respondent Opal Maze is exempt. Therefore, the Secretary hereby sets aside the ALJ's conclusions that Respondents Opal and Phillip Maze meet the exemption at 42 U.S.C. § 3603(b)(1) and are exempt from liability under subsections 804(a)-(b) of the Act. Neither Respondent Opal Maze, who used Respondent Phillip Maze as her agent, nor Respondent Phillip Maze, as her agent, is entitled to the owners' exemption and thus both are liable under subsections 804(a)-(b) of the Act.


Upon review of the entire record in this proceeding, including all the briefs, and based on applicable law, I GRANT the Charging Party's Petition for Secretarial Review of Initial Decision Upon Remand. Pursuant to 24 C.F.R. § 180.675(a), I SET ASIDE Part B of the April 26, 2011, Initial Decision Upon Remand. Neither Respondents Opal nor Phillip Maze is exempt under 42 U.S.C. § 3603(b)(1). Finally, I replace Part B of the Initial Decision Upon Remand with the following paragraph:

The exemption found in subsection 803(b)(1) does not apply to Respondents Opal or Phillip Maze. As I previously held, Respondent Phillip Maze was delegated by Respondent Opal Maze's attorney-in-fact, Kenneth Maze, to serve as her agent with regard to her mobile homes. Respondent Phillip Maze is not exempt because the exemption applies only to owners, and he does not own the subject property. Respondent Opal Maze is not exempt because she used an agent or person in the business of renting dwellings to rent the subject property, specifically Respondent Phillip Maze. See 42 U.S.C. § 3603(b)(1); 42 U.S.C. § 3603(c)(2). Respondent Phillip Maze violated subsections 804(a) – (b) of the Act and Respondent Opal Maze is vicariously liable for Respondent Phillip Maze's violations. Thus, both Respondents Phillip and Opal Maze are liable under subsections 804(a) – (b) of the Act.

Respondents are advised that they are entitled to seek judicial review of this Order pursuant to 42 U.S.C. Chapter 45, § 3612(i).

IT IS SO ORDERED.

Dated this 25 day of May 2011



Laurel Blatchford
Secretarial Designee