

UPDATE: Ohio Supreme Court rules in favor of PHA on the Question of Permitted Fair Housing Claims

July 8, 2008

Ohio Supreme Court Overturns Lower Court Ruling

On July 8, 2008 the Ohio Supreme Court published a slip opinion ruling in favor of the Akron Metropolitan Housing Authority in *Ohio Civil Rights Commission v. Akron Metropolitan Housing Authority*. In a 7-0 decision, the Ohio Supreme Court ruled that landlords are not liable for a failure to prevent racial harassment of one tenant by another. This was a significant victory for housing authorities since the lower court's decision would have opened new avenues of civil liability that could be imposed upon housing authorities. According to the slip opinion, the Ohio Supreme Court's decision was based largely on the premise that because there is not an agency relationship between landlords and tenants, landlords should not be liable for the actions of tenants that are outside of the landlord's control. This argument was also put forth by the amicus curie brief filed on behalf of industry groups and prepared by Reno & Cavanaugh. More information on this case follows below. Full text of the slip opinion can be found at: <http://www.sconet.state.oh.us/rod/docs/pdf/0/2008/2008-Ohio-3320.pdf>.

Appellate Court's Ruling Imposed New Liability

To prevent significant new legal liability from being imposed on Ohio landlords, the Akron Metropolitan Housing Authority and several industry groups have asked the Ohio Supreme Court to reverse a recent ruling allowing landlords to be sued under fair housing laws for failing to remedy racial or other harassment conducted solely by one tenant against another. In *Ohio Civil Rights Commission v. Akron Metropolitan Housing Authority*, a public housing tenant who alleged racial harassment by a neighboring tenant sued the housing authority under the Fair Housing Act for failing to stop the harassment. A lower court ruling held that under the federal Fair Housing Act and a similar Ohio statute, landlords must remedy "hostile living environments" among tenants, just as employers must remedy "hostile work environments," which are created when one employee harasses another.

Industry Groups Filed Amicus Brief Urging Reversal

Urging reversal, a "friend of the court" brief was filed with the Ohio Supreme Court by numerous industry organizations, including The Council of Large Public Housing Authorities, The National Apartment Association, The National Association of Housing and Redevelopment Officials, The National Leased Housing Association, The National Multi Housing Council, and The Public Housing Authorities Directors Association. The *amicus* brief, prepared by Reno & Cavanaugh, a D.C. law firm, argued that the lower court's analogy to the law of the workplace is flawed, because landlords do not have the same legal duties to (or control over) tenants that employers have over employees.

The *amici* also argued that fair housing claims are inappropriate where the discriminatory acts are not conducted by or attributable to the defendant, and that other appropriate legal remedies already exist, such as breach of contract

and tort actions, and discrimination claims against the other tenant. Further, the *amici* brief described the significant legal, economic, political and administrative burdens that would result if either public or private landlords were legally responsible for policing the behavior of their tenants in this manner.

Please call or email any of the Reno & Cavanaugh PLLC attorneys below to discuss this issue.

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