

Pryor Cashman Obtains Dismissal of Discriminatory Housing Ad Claims Against Newspaper

Pryor Cashman represents the Spanish-language newspaper *El Diario*, one of ten New York area newspapers that were named as defendants in an action alleging that the newspapers had published classified housing ads that indicated discrimination against protected classes in violation of the Fair Housing Act (“FHA”). On September 16, 2009, Federal District Judge P. Kevin Castel of the Southern District of New York granted a joint motion by all defendants to dismiss the complaint based on the plaintiffs’ lack of standing to maintain the action.

The plaintiffs operate a business known as Space Hunters which compiles and sell lists of available room rentals tailored to the requirements of particular customers who are in the market for rentals. The lists are created using information culled from newspaper classified housing ads.

The plaintiffs asserted that they had standing to maintain a claim under the FHA because: (a) they were business competitors of the defendants; (b) they play the role of “testers” seeking to uncover discriminatory practices; and (c) in their view, Second Circuit case law dictated that any person who proves that they read a discriminatory ad has standing to assert a violation of the FHA. The Court, however, agreed with the defendants’ arguments that plaintiffs: (a) did not compete in the same business arena as defendants; (b) had not conducted any “testing” in connection with the advertisements at issue; and (c) had not alleged any “concrete and particular injury in fact” as required to establish standing under Article III, § 2 of the U.S. Constitution.

The Court determined in particular that in order for the reader of an advertisement to have standing to maintain a claim that the advertisement indicates discrimination in violation of the FHA, he or she must allege “some form of personal injury, including psychic injury or substantial insult or distress” resulting from having read the advertisement. Plaintiffs alleged no such injury in this case.

The Court denied the plaintiffs’ request for leave to file a Third Amended Complaint, noting that the plaintiffs had previously been granted the opportunity in their Second Amended Complaint to address the standing issues.

In dismissing the case, the Court did not address any issues or defenses other than standing, and it did not determine whether the ads in question actually were discriminatory.

To read the decision in its entirety, please [click here](#).