

## Discrimination on Familial Status

# Dispute Gives Rise to Fair Housing Act Lawsuit

BY LAURI CROCE, ESQ.



Two individual condominium owners, Kayla Joyella and Terri L. Hamad, brought suit against their condominium association, its property manager, and five members of its board of directors, alleging that the association's bylaws discriminated on the basis of familial status in violation of the federal Fair Housing Act. The bylaws for the Woodcrest Condominium Association contained a provision which limited families with children to first-floor units only. The trial court granted judgment as a matter of law against Joyella and Hamad, but the Sixth District Court of Appeal sitting in Michigan reversed. The court certified the case, *Hamad v. Woodcrest Condominium Association*, 2003 FED App. 0118 (6th Cir. ), for publication. (This article deals with only parts of the Hamad decision, for the sake of clarity and brevity.)

### What the Bylaws Dictate

Woodcrest is a four-building, three-story condominium development located in Monroe, Michigan. Its bylaws prohibited families with children from purchasing or living in units on the second or third floors. The bylaws further provided that if a child moved in with a second- or third-floor owner, the owner would be fined if he or she did not vacate the unit within one year of the child's arrival. Terri Hamad and her husband, Akram, purchased a first-floor unit in 1997. When they had a child in 2000, they decided to move, despite not being required to do so. They attribute part of their difficulty in selling the unit to the bylaws that restrict children to first-floor condominium units. Kayla Joyella owned a third-floor unit. She was thinking about becoming the legal custodian of her 15-year-old nephew. But the Woodcrest board of directors denied Joyella's request for permission to allow her nephew to move in with her.

### Disputes with Board

Prior to the filing of their lawsuit, Hamad and Joyella were both embroiled in emotionally-charged disputes with the board. The ruckus began in September of 1999 when Hamad sent a letter to members of the condominium association detailing a series of complaints against the association's board of directors. Hamad complained that the board had attempted to prevent an elderly co-owner from arranging for bus service at the door of her building. She alleged that the board held secret meetings and spent money on physical improvements without the knowledge and approval of the association's members. Finally, Hamad alleged "again without our knowledge, preparations are being made to turn this complex into a 50+ complex." She signed her letter as "Owner #57 and Director, Monroe County Commission on Aging."

### Complaint Filed

In October, Hamad filed a complaint with the Michigan Department of Consumer and Industry Services alleging that the association's property manager had received an illegal "referral fee" from a real estate broker. (The Department eventually concluded that the allegation could not be substantiated.) In November, Hamad complained to the Michigan Civil Rights Commission of several "Fair Housing Issues" at the association relating to the bus service issue. Mrs. Hamad also complained, for the first time, that "[f]amilies with children are limited to first floor condos." She later wrote to a member of the Michigan legislature for help "regarding the bus situation at Woodcrest."

### Lawsuit Filed Under the Fair Housing Act

Although the bylaw provision limiting families with children to first-floor units had been in effect for over a decade, Mrs. Hamad made no mention of the first-floor rule in her previous letters.

In May of 2000, Joyella distributed a letter to other Woodcrest owners to

make them aware of "recent conduct" of the board members and property manager. Joyella referenced some of Hamad's complaints, then complained that the property manager treated her rudely when Joyella asked about the bylaw provision limiting children to first-floor units. Thereafter, the board and property manager distributed their own letter rebutting the points raised in Joyella's letter. Although Hamad's complaints against the board related primarily to the busing issue (with the issue of discrimination against families with children raised only incidentally), and Joyella's complaints focused on her treatment by the property manager and board members (not on her inability to have her minor-nephew live with her), Hamad and Joyella filed their lawsuit under the Fair Housing Act in June of 2000.

The Fair Housing Act prohibits discrimination in the sale or rental of housing because of "race, color, religion, sex, familial status, or national origin." 42 U. S. C. Section 3604. Any "aggrieved person" is authorized to bring a civil action pursuant to 42 U. S. C. Section 3613. The Act defines an "aggrieved person" as one who "(1) claims to have been injured by a discriminatory housing practice; or (2) believes that such person will be injured by a discriminatory housing practice that is about to occur." Section 3602(i).

In deciding that Hamad did not have standing to sue as an "aggrieved person," the district court adopted overly narrow reasoning to conclude: "Hamad lives in and is attempting to sell a condominium unit that is on the first floor, one that may be purchased by families with children." Similarly, as to Joyella, the court narrowly concluded that she too lacked standing because she did "not yet have legal custody of her minor nephew."

### Court of Appeals Reaffirms Broadening Fair Housing Laws

The Court of Appeals disagreed with the district court. The crux of the *Hamad* decision is that anyone who

## Housing Lawsuit

▶ CONTINUED

lives in a condominium complex with discriminatory provisions in their governing documents is an “aggrieved person” simply by virtue of being subject to the discrimination, whether in fact the discrimination actually affects him or her. In other words, “the touchstone for standing under the Fair Housing Act is whether one is a member of the community in which allegedly unlawful discrimination is taking place,” and Joyella and Hamad “clearly alleged that they were resi-

dents of Woodcrest.” Note that the appellate court was unpersuaded by the contention that Joyella and Hamad lacked standing because they failed to offer evidence that they suffered any of the stigmatic or economic harm associated with membership in a community whose familial-status composition was being manipulated. Binding precedent in the Sixth Circuit held that members of the community in which allegedly unlawful discrimination was taking place had standing to sue because, as members of the com-

munity, they were *threatened* with the stigmatic and economic harm attendant to proscribed segregation, even if they did not introduce evidence that they actually suffered such harm. Hence, what started as an apparent crusade on the part of Terri Hamad to redress the Woodcrest board of directors’ mistreatment of an elderly resident’s busing needs developed into a federal lawsuit and appellate decision which re-affirmed that fair housing laws should be broadly, not narrowly, construed. ■