

Investigation of Fair Housing Complaint

Legal Opinion: GME-0007

Index: 9.225

Subject: Investigation of Fair Housing Complaint

February 12, 1992

Honorable Phil Gramm
United States Senator
2323 Bryan Street, #1500
Dallas, Texas 75201

Dear Senator Gramm:

Thank you for your December 16, 1991 memorandum in which you requested that the Department of Housing and Urban Development (HUD) respond to the concerns your constituent, Richard Carlson, raised in his December 1, 1991 letter to you. Mr. Carlson raised two concerns regarding HUD's investigation of the fair housing complaint filed with HUD on December 28, 1990, alleging discrimination based on familial status and national origin, in which he was named a respondent. *Bad Horse v. Carlson*, Case No. 08-91-0077-1. Those two concerns were: (1) HUD's alleged failure to complete its investigation of the complaint in a timely fashion; and (2) an alleged unconstitutional search of his rental property in Sioux Falls, South Dakota by a member of HUD's investigative staff.

With respect to his first contention, Mr. Carlson complains that HUD has been investigating the fair housing complaint's allegations for nearly one year, while the Fair Housing Act (Act) requires that HUD complete an investigation within 100 days. With all respect, Mr. Carlson misstates the Act's requirements. The Act provides that HUD shall complete the investigation of a complaint within 100 days "unless it is impracticable to do so." 42 U.S.C. 3610(a)(1)(B)(iv); 24 C.F.R. 103.225 (1991). In cases where it is impracticable to complete an investigation within 100 days, HUD is required to notify the complainant and respondent in writing of the reasons for the delay. 24 C.F.R. 103.225 (1991). HUD complied with this requirement and, by letter dated June 3, 1991, notified Mr. Carlson that it had become impracticable for HUD to complete its investigation within 100 days.

Mr. Carlson's second concern is more serious. He alleges a member of HUD's investigative staff violated his Fourth Amendment rights by conducting a warrantless search of his rental property. There is no dispute that a HUD investigator conducted a search of the property in question and did so without a warrant.* The

* The search resulted from HUD's need to learn the size and dimensions of Mr. Carlson's property, a frequent need, particularly in cases charging discrimination on the basis of familial status.

only dispute is whether the search violated Mr. Carlson's Fourth Amendment rights. While there appears to be no case directly on point, because HUD's investigator conducted the search only after obtaining the consent of Mr. Carlson's rental agent, for the reasons below, HUD does not believe that the search violated those rights.

HUD's regulations relating to the conduct of investigations provide that HUD will seek the voluntary cooperation of all persons to obtain access to premises, documents, or other sources of information. 24 C.F.R. 103.215(a)(1991). HUD's investigative staff repeatedly, yet unsuccessfully, sought the voluntary cooperation of Mr. Carlson in its attempt to measure the dimensions of his property. While in Sioux Falls investigating another case, the HUD investigator sought the cooperation of Mr. Carlson's rental agent, Kathy Badger, with respect to measuring the property. Ms. Badger voluntarily consented and assisted the investigator in taking those measurements.

Most administrative searches are unobjectionable when they are conducted with consent. The standards for consent to an administrative search are less stringent than the standards for consent to a criminal search. See, e.g., *E.Z. v. Coler*, 603 F. Supp. 1546, 1556 (N.D. Ill. 1985). When consent is given for an administrative search, absent coercion, knowledge of the right to refuse entry is not required. *Id*; *United States v. Thriftmart*, 429 F.2d 1006, 1010 (9th Cir.) cert. denied, 400 U.S. 926 (1970). The present matter involved an administrative search, as opposed to a criminal search. Contrary to Mr. Carlson's statement that HUD's investigator demanded and coerced entry onto the property, HUD's review of the facts reveals that the investigator made no demand, and the consent Mr. Carlson's agent gave to search his rental property was not coerced in any way. The investigator stated that after she identified herself and described the information she needed for her investigation, Mr. Carlson's agent volunteered to take her to the property and assisted with the measuring of the unit.

Mr. Carlson contends that since he previously had told two members of HUD's investigative staff that he would not allow entry onto his premises without a search warrant, subpoena, or other legal authority, that any entry without such authority violated his constitutional rights. It is well established that the search of a property, without warrant and even without probable cause, but with proper consent voluntarily given, is valid under the Fourth Amendment. See, e.g., *Schneckloth v. Bustmonte*, 412 U.S. 218, 219 (1973); *United States v. Matlock*, 415 U.S. 164, 165-66 (1974) (hereafter "Matlock"). Generally, a person who exercises control over a premises may consent to a search thereof, and evidence gathered in that search may be used against persons who did not consent. See, e.g., *Marshall v.*

Western Waterproofing Co., Inc., 560 F.2d 947, 950 (8th Cir. 1977); Matlock, 415 U.S. at 171. In the present case, Kathy Badger, Mr. Carlson's rental agent, exercised control over Mr. Carlson's rental property and voluntarily consented to allow HUD's investigator to measure the property.

Again, while there appears to be no case directly on point, from the above, it does not appear that HUD's conduct in gaining access to measure the dimensions of Mr. Carlson's rental property violated his Fourth Amendment rights, as he contends. Nonetheless, we are instructing our investigators that in the future consent by an agent should not be used to override an earlier expressed contrary desire of a principal.

I hope that this information proves helpful to you. If you have additional information or concerns, please feel free to contact this office. Thank you for your interest in fair housing.

Very sincerely yours,

Russell K. Paul
Assistant Secretary

bcc:

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