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Legal Affairs

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FAIR HOUSING AND WIRE FRAUD LAWSUITS – SEPT. 2018

Fair Housing

Lawsuit Decided:

Fair Housing Center of Central Indiana, Inc., et al. v. Carolyn Smitley

July 2018: In Federal Court, the estate of a disabled woman won a lawsuit based on housing discrimination. This case is important in Indiana for housing discrimination cases down the road as the Judge allowed recovery for emotional distress and punitive damages. The Plaintiff suffered embarrassment, frustration and emotional distress because of the Defendant's actions. Defendant Smitley, property owner and manager, intentionally discriminated against the Plaintiff or acted with reckless disregard for her rights as a tenant violating federal and state fair housing acts.



Hence, Judge Lawrence of the U.S. District Court for the Southern District of Indiana entered judgment for the victim and the Fair Housing Center of Central Indiana in the amount of **\$219,747.75** for compensatory damages, punitive damages and attorney fees. Unfortunately, the Plaintiff died during the legal proceedings. Her claim survived with her granddaughter as personal representative of the estate.

Facts: Shortly after Plaintiff moved into an apartment in Indianapolis, she became ill and was diagnosed with a serious flesh-eating infection called necrotizing fasciitis. It is not communicable or contagious. After being released from the hospital, she returned home to recover. Plaintiff McGuffin continued with recovery for several months but had to rely on others to care for her daily grooming and had to stay in a hospital bed at home. McGuffin received regular visits from therapists and doctors during this time.

Carolyn Smitley, owner of the apartment building took over as manager at this point and would enter Plaintiff's apartment without permission making statements the "she did not want a hospital bed in the residence and that McGuffin was too sick to live there." Smitley also tried to get the woman sent to a nursing home.

Then, Smitley refused to accept Plaintiff's rent check and filed an eviction action, alleging refusal to leave and nonpayment of rent. McGuffin survived eviction with help from the Indiana Legal Services and the Fair Housing Center. Smitley still refused to take the rent despite the court order.

This case is rare as generally a claim such as this one will settle without proceeding to a judicial ruling, even though housing discrimination is common. This case will help victims succeed with discrimination cases down the road.

Lawsuit Filed: *National Fair Housing Alliance, Et Al. v. Facebook, Inc.*

August 2018: The National Fair Housing Alliance in U.S. District Court in the Southern District of New York, alleges that Facebook's advertising platform enables landlords and real estate brokers to bar individuals in protected classes such as mothers, the disabled, and Spanish-language speakers from receiving or viewing housing ads in violation of the Fair Housing Act. There are two (2) billion users of Facebook.

The Fair Housing Act makes it illegal to publish any advertisement “with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin.” Violators may be fined tens of thousands of dollars.

Using Facebook’s dropdown “exclusion” menu, advertisers were able to buy housing ads that blocked groups such as “soccer moms”, “parents with teenagers”, people interested in a disabled parking permit and people interested in Telemundo, a Spanish television network.

In the wake of this recent lawsuit, Facebook is making changes to their company advertising policy by removing over 5000 targeting options that may operate to exclude audiences based on ethnicity, race, religion or ZIP code. Coming shortly, Facebook will also require a new certification from advertisers prior to placing ads.

Wire Fraud

Lawsuit Decided: *Bain v. Platinum Realty, LLC.*

June 2018: A Kansas jury found the Buyer’s agent was 85% responsible for the Buyer’s losses after forwarding a fraudulent email containing false wiring instructions to the Buyer. The Buyer used the false instructions to wire the purchase money of \$196,622 to the fraudulent account. The criminal had infiltrated the emails between the parties and created fake email accounts that looked like the email accounts used by the parties.

The United States District Court for the District of Kansas affirmed the jury verdict for \$167,129.

TAKEAWAY TO REDUCE RISK FOR IAR MEMBERS:

As demonstrated by the court ruling above, IAR members may be found liable for forwarding fraudulent emails containing wire instructions. The IAR Purchase Agreement and Listing Contract contains the following language to reduce this risk:

WIRE FRAUD: If you receive any electronic communication directing you to transfer funds or provide nonpublic personal information, **EVEN IF THAT ELECTRONIC COMMUNICATION APPEARS TO BE FROM BROKER OR TITLE COMPANY**, do not respond until you verify the authenticity by direct communication with Broker or Title Company. Do not rely on telephone numbers provided in the electronic communication. Such requests may be part of a scheme to steal funds or use your identity.

Make sure you discuss this wire fraud alert language with your client.

I strongly advise Indiana Brokers to stay out of the loop completely with wiring instruction emails. Once you begin a relationship with a new client, inform them that you will NEVER send wiring instructions via email.

The real estate client should immediately contact the broker (you) and the title company - by personal phone call - if he or she does receive an email containing any wiring instructions or change to the initial wiring instructions. Also, [alert the FBI](#) instantly if fraud is suspected.

Here is a bulletin prepared by Pearl Insurance highlighting [12 techniques to reduce your risk and stay safe](#).

If you have any questions regarding the professional standards activity or Code of Ethics, please contact the IAR Legal Hotline at 1-800-444-5472, or complete this [online form](#). As a reminder, the IAR Legal Hotline is available to Managing Broker members and their designated agents, Monday – Friday, 9 a.m. – 5 p.m. Managing Brokers, need to designate an agent to use the Legal Hotline? Do it [online here](#).