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FAIR HOUSING ACT VIOLATIONS ON WEBSITES



Last year, the federal courts looked at two websites to determine whether they violated the Fair Housing Act (FHA). In one case, Chicago Lawyers' Comm. For Civil Rights Under Law, Inc. v. Craigslist, Inc., 519 F.3d 666 (7th Cir. 2008), the website was not found liable for FHA violations. In the second case, Fair Housing Council of San Fernando Valley v. Roommates.com, Inc., 521 F.3d 1157 (9th Cir. 2008), the website was found liable for FHA violations.

The difference between these two decisions rests on whether the website simply “published” the content vs. whether the website “developed” the content. Craigslist was not found liable for FHA violations because they merely published the content, whereas Roommates.com was found to have violated the FHA because they developed the content.

A summary of the facts and holding in these 2 cases is discussed below.

CRAIGSLIST, INC.

Craigslist, Inc. operates a website which allows users to post information about jobs, items for sale, personals, and housing opportunities, among other things. The Website allows postings from both users who are either seeking or offering housing for sale or lease. The users communicate with each other if they are interested in the products or services being offered on the Website. The Website does not edit users’ posts.

A lawsuit was filed against the Website for publishing housing advertisements which exhibit a preference, limitation, or discrimination on the basis of race, color, national origin, sex, religion, and familial status, which is illegal under the

FHA. Examples found on the Website were postings such as “No Minorities” and “No Children”. The United States Seventh Circuit Court of Appeals held that an online service provider is not “treated as the publisher or speaker of any information” provided by someone else. The Website here was not the publisher of statements posted by third parties, and so it was not liable for these advertisements which allegedly violated the FHA.

ROOMMATE.COM, LLC

Roommates.com, LLC operates a website which serves as a roommate locator service. The Website allows users to post notices about residences they are willing to share. Under its terms of service, the Website states that it does not screen posts on the site, and that users are “entirely responsible” for the content they post.

A lawsuit was filed alleging that the Website violated the FHA because it solicited and used discriminatory information from its users. As part of the registration process, the Website required users to disclose their gender, family status, and sexual orientation by providing users a limited number of responses to questions from a drop down menu containing pre-selected answers. The Court noted that soliciting this information in other contexts could be illegal, such as a real estate broker inquiring about the race of a potential applicant. The Court also found because the Website required this information and shared this information, it became a “developer” of its information and so could not claim immunity under the CDA, or Communications Decency Act, which might otherwise shield a website from liability for FHA violations.

IN CONCLUSION

To summarize, if a website does nothing more than post the users’ comments on the Internet, then there is no liability for FHA violations. However, if a website requires users to provide information which could be used for a discriminatory purpose under the FHA, there may be liability.

These cases do not let REALTORS® off the hook (or any individuals) if they are the person posting a website advertisement that could be seen as discriminatory. Please see IAR’s Fair Housing Q & A on do’s and don’ts to protect you from fair housing advertising violations. □