No. 10-3365

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FAIR HOUSING RESOURCES CENTER,

Plaintiff-Appellant

v.

DJM'S 4 REASONS LTD., *et al*.,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT URGING REVERSAL

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ISSUES PRESENTED

1. Whether the district court erred by (a) refusing to give plaintiff's requested jury instruction that defendant's failure to make a reasonable accommodation to its policies and practices may constitute discrimination on the basis of disability under the Fair Housing Act and (b) instructing the jury that, for liability under 42 U.S.C. 3604(c), it must find that the testers' claimed disabilities were a "motivating factor" for defendant's discriminatory statements.

2. Whether the district court erred in dismissing claims against defendant Dudley Murphy, where he acted as the sole rental agent for, and owned 99 percent of, defendant DJM's 4 Reasons Ltd.

INTEREST OF THE UNITED STATES

This case involves the scope of liability under the Fair Housing Act (FHA), 42 U.S.C. 3601 *et seq.* The Act broadly prohibits discrimination in the sale or rental of housing on various bases, including disability. 42 U.S.C. 3604(a), (b) & (f). The Attorney General and the United States Department of Housing and Urban Development share enforcement authority under the FHA. 42 U.S.C. 3614(a), 3612(a) & (o).

STATEMENT OF THE CASE

During tests conducted by the Fair Housing Center of Lake County, Ohio (the Center), and an investigation by the Ohio Civil Rights Commission, landlord Dudley Murphy repeatedly stated that he would not allow any animals at his property, even if the animals were service animals assisting persons with disabilities. The Center sued Murphy for violation of the FHA, which prohibits discriminatory statements in the rental of housing. At trial, the court refused to give plaintiff's requested instructions that the FHA requires accommodation for disability, and instructed the jury that it could only find a violation of the FHA if testers' disabilities were a "motivating factor" in defendant's conduct. In addition,

the court dismissed all charges against Murphy, allowing plaintiff to proceed only against his corporation.

STATEMENT OF THE FACTS

1. The Fair Housing Act

As amended in 1988, the Fair Housing Act prohibits discrimination in the sale or rental of a dwelling on the basis of disability. 42 U.S.C. 3604(f)(1) & (2). The Act defines discrimination on the basis of disability to include "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [a person with a disability] equal opportunity to use and enjoy a dwelling." 42 U.S.C. 3604(f)(3)(B). In addition, the Act makes it unlawful "[t]o make * * * any * * * statement * * * with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on [disability], or an intention to make any such preference, limitation, or discrimination." 42 U.S.C. 3604(c).

2. The Fair Housing Center's Disability Testing

In 2008, the Center conducted testing to identify discrimination against local home seekers with disabilities. Tr. 33, 35 (Patricia Kidd, Director of the Fair Housing Resource Center). [1] It reviewed local advertisements for housing, selected

[1] "R. _" refers to documents filed in the district court, identified by docket entry number. "Tr. _" refers to pages in the trial transcript. The transcript consists of R. 93, 94, and 95 and is consecutively paginated.

a sample of properties advertising a "no pet" policy, and assigned trained "testers" to respond to the advertisements in the guise of potential renters. Tr. 33, 52-54 (Kidd). [2] The Center conducted such testing procedures to determine whether landlords were using "no pet" policies to bar service animals aiding persons with disabilities. Tr. 53-58 (Kidd). One of the landlords tested was Dudley Murphy, sole agent and an owner of DJM's 4 Reasons Ltd. Tr. 35 (Kidd), 215 (Murphy). The company owns eight lakeside cottages, a house, and two multi-unit buildings in Madison, South Euclid, and Lyndhurst, Ohio. Tr. 189, 219-220 (Murphy). Murphy manages the properties and is the leasing agent. Tr. 215 (Murphy). He owns 99% of the company. His wife holds a one percent interest. Tr. 212-213 (Murphy).

The Center sent a pair of testers to inquire about Murphy's property. Tr. 123 (Paul Tate, Program Manager at the Fair Housing Center). Matthew Butler, one of the Center's testers, responded to DJM's 4 Reasons' advertisement and spoke to Murphy. Tr. 100-102 (M. Butler), 122-124 (Tate). When asked, he told Murphy

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[2] Testing has long been accepted as a means of detecting discrimination. *Havens Realty Corp.* v. *Coleman*, 455 U.S. 363, 373-374 (1982). Testers have standing to sue under the FHA, *ibid*., and housing organizations may sue "[r]egardless of whether an organization learns of potential discrimination through independent complaints or through its own observations." *Fair Hous. Council, Inc.* v. *Village of Olde St. Andrews*, 210 F. App'x 469, 478 (6th Cir. 2006) (unpublished), cert. denied, 552 U.S. 1130 (2008).

that he did not have any pets. Tr. 104-105 (M. Butler). He set up an appointment, visited the property, called Murphy again, and explained that he had an assistance animal prescribed by a doctor for treatment of anxiety. Tr. 101-105 (M. Butler). Murphy responded, "You told me you didn't have a pet." Tr. 102 (M. Butler). Butler explained that his animal was not a pet. Tr. 102 (M. Butler). Murphy asked if the animal was a dog and if it lived with him all week. Tr. 102 (M. Butler). The tester agreed, and Murphy said, "[T]hat's my definition of a pet." Tr. 102 (M. Butler).

A second round of testing followed. Tr. 126-127 (Tate). Rachael Lauriel called in response to Murphy's ad, and asked about his pet policy. Tr. 82, 84 (Lauriel). Murphy said "[a]bsolutely no pets" were allowed. Tr. 82-84 (Lauriel). The two set up an appointment, and Murphy showed her the property. Tr. 86-87 (Lauriel). Another tester, Kellie Butler, also called and asked about renting with her brother. Tr. 92 (K. Butler). She told Murphy her brother was a blind person with a guide dog. Tr. 93-94 (K. Butler). Murphy said the ad in the paper stated no pets were allowed. Tr. 94 (K. Butler). The tester explained that the dog was medically prescribed and not a pet. Tr. 94 (K. Butler). Murphy replied the dog was a pet and he would not allow it. Tr. 94 (K. Butler). He was "agitated or angry" and "very abrupt" with the tester. Tr. 94-95 (K. Butler).

3. The Ohio Civil Rights Commission Investigation

The Center filed a complaint with HUD and the Ohio Civil Rights Commission. Tr. 43 (Kidd). In response, DJM's 4 Reasons sent the Commission a letter stating it would not allow dogs on the property. R. 99-6, Pl.'s Mot. To Supplement R., Ex. 6, at 1. The Commission contacted Murphy, described their mission to "educate the public about the Fair Housing laws," and explained the difference between a service animal and a pet. Tr. 145-146 (Robert Krosky, Investigator at the Ohio Civil Rights Commission). The Commission told Murphy that his policy was problematic because it excluded all dogs. Tr. 145 (Krosky). After the call, Murphy sent the Commission another letter. Referring to the complaint, he told the Commission to "let the tenant know that there will be No Pets of any kind allowed," and stated that allowing dogs would make it harder to maintain the property. Tr. 147 (Krosky); R. 99-6, Pl.'s Mot. To Supplement R., Ex. 6, at 2.

4. The Trial

The Center brought suit under Ohio law and the federal Fair Housing Act, 42 U.S.C. 3604 & 3617. The Center sought $25,000 in compensatory and punitive damages, as well as revisions to DJM's 4 Reasons' policies. R. 1, Compl. and Jury Demand at 5; Tr. 237-238. The day before the trial, the Center dismissed its claims based on discrimination in rental under Sections 3604(f)(1) & (3), and

proceeded solely on its claim that Murphy made discriminatory statements in violation of Section 3604(c). R. 65, Pl.'s Notice of Intent to Limit Scope of Claims At Trial.

At trial, the jury heard testimony about Murphy's statements to testers and recordings of relevant conversations. Under cross-examination, Murphy stated he may have encountered "over 25 people" who at some point asked to rent with a "trained and certified" animal. Tr. 209 (Murphy).

a. Judgment As A Matter Of Law For Murphy

At the close of plaintiff's evidence, the court granted defendant's motion under Federal Rule of Civil Procedure 50, awarding judgment as a matter of law in favor of Murphy in his individual capacity. Tr. 169-171, 241; R. 69, Trial Minutes. The court stated Murphy was acting on behalf of his corporation, DJM's 4 Reasons, and not "on his own." Tr. 170-171. Therefore, the court concluded this was "different than the maintenance man or someone who doesn't have any connection other than an employee of the corporation," and expressed concerns about plaintiff "get[ing] both" the company and Murphy. Tr. 169, 172.

b. Jury Instructions Regarding "Reasonable Accommodation"

On the issue of reasonable accommodation under the FHA, plaintiff requested a jury instruction that:

> [t]he Fair Housing Act * * * defines discrimination to include a refusal to make reasonable accommodations in rules, policies,

> practices or services when such practices may be necessary to afford such a person equal opportunity to use and enjoy the dwelling. Moreover, the law imposes an affirmative duty upon housing providers reasonably to accommodate the needs of handicapped persons.

R. 46-1, Pl's Trial Br., Ex. A, at 21 (instruction number 17). The plaintiff also requested that the jury be instructed that "[a]s a matter of law * * * a request for a Seeing Eye Dog by a person who is blind is a reasonable accommodation to a landlord's 'no pet' policy." R. 46-1, Pl's Trial Br., Ex. A, at 26 (instruction number 22); Tr. 239. The court refused the instructions and formulated its own charge, with no discussion of reasonable accommodation. Tr. 245, 253-254. Plaintiff objected to the proposed instruction, explaining that the jury needed "to know that failing to make a reasonable accommodation is discrimination," and stating accommodation was a part of "a definition of 3604(c) of what discrimination means." Tr. 236.

c. Jury Instructions Regarding Motivation

In addition, the plaintiff requested various instructions explaining that no discriminatory intent was required under Section 3604(c). The Center asked the court to instruct the jury that:

> Whether the Defendants intended to harm blind people, or likes or dislikes blind people or handicapped individuals, is completely irrelevant to your decision in this matter. If you find that Dudley Murphy made the statements that Plaintiff alleges he made to their testers, and believe that telling a person with an assistance animal that he or she could not rent from Defendant would discourage a

> reasonable person from continuing to seek housing from Defendants, then you should find in favor of Plaintiff.

R. 46-1, Pl's Trial Br., Ex. A, at 29 (instruction number 25). Plaintiff also requested a charge that "there is no intent in [Section 3604(c)] other than the intent to make a statement" and "[i]f you find that the Defendant made statements that would discourage a reasonable listener from renting from Defendants, then Plaintiff has proved its case under this portion of the fair housing laws and you should find in favor of Plaintiff." R. 46-1, Pl.'s Trial Br., Ex. A, at 39 (instruction number 33); see also Tr. 178. The court declined to give the instructions. Tr. 178-182, 236-241. Instead, the court gave its own instruction, charging that the jury must find:

> 1. In response to the testers for Plaintiff who claimed a disability, Defendant refused to continue negotiating for the rental of the housing or discouraged the rental to the testers, or made statements to a reasonable listener that indicated a preference or otherwise made its housing unavailable; *and*
>
> 2. That the claim of disability by the testers for Plaintiff was a *motivating factor* for the Defendant's actions.

Tr. 254 (emphasis added). The court also instructed the jury that:

> Plaintiff alleges that the Defendant violated the Fair Housing Law of the United States and of the State of Ohio by refusing to rent residential property under its control to people who requested an accom[m]odation to Defendant's "no pet" policy because of a disability. That's not really right. They are claiming that because of the statement or statements made that DJM's discriminated against somebody on the basis of a disability.

Tr. 245.

During deliberations, the jury submitted a question about the definition of "motivating factor," asking whether it "is synonymous with 'intent.'" Tr. 297. Plaintiff again asked that the jury be instructed that no discriminatory intent was needed for a violation of Section 3604(c). Tr. 297-298. The court gave the jury a dictionary definition of "motive." Tr. 300-301.

The jury returned a verdict in favor of defendant. Plaintiff moved for a new trial, alleging that the court improperly dismissed Murphy in his individual capacity, erred in failing to instruct the jury that Section 3604(c) has no intent requirement, and erred in not charging the jury that failure to accommodate disability constitutes discrimination. R. 73, Pl.'s Mot. For a New Trial. The court denied plaintiff's motion. R. 81, Mem. Op. and Order.

SUMMARY OF ARGUMENT

The district court committed reversible error in failing to instruct the jury that a refusal to make a reasonable accommodation violates the Fair Housing Act. Refusal to provide reasonable accommodations is a primary form of discrimination against persons with disabilities, and without an instruction on accommodation, the jury was unable to assess potential discrimination. The court also erred in instructing the jury that, in order to find a violation of Section 3604(c), it must find that the testers' claimed disabilities were a "motivating factor" for the defendant's discriminatory statements. In fact, Section 3604(c) has no intent requirement. The

court further erred in dismissing the charges against defendant Dudley Murphy, who made the statements and is the sole rental agent and primary owner of DJM's 4 Reasons. Corporate officers are liable for their own misconduct.

ARGUMENT

I

THE DISTRICT COURT'S JURY INSTRUCTIONS WERE ERRONEOUS IN TWO RESPECTS, AND SHOULD BE REVERSED ON APPEAL

A. Standard Of Review

A court of appeals will review jury instructions describing statutory requirements to determine if "as a whole * * * they adequately inform the jury of the relevant considerations and provide a basis in law for aiding the jury in reaching its decision." *United States* v. *Blackwell*, 459 F.3d 739, 764 (6th Cir. 2006) (citation omitted), cert. denied, 549 U.S. 1211 (2007). The legal correctness of an instruction is reviewed *de novo*, but the court will reverse a jury verdict on account of instructional error "only when the instructions, viewed as a whole, [are] confusing, misleading, and prejudicial." *Bridgeport Music, Inc.* v. *UMG Recordings, Inc*., 585 F.3d 267, 274 (6th Cir. 2009) (internal quotation marks and citation omitted). Where there is no objection to an instruction, it is reviewed for plain error. *Bath & Body Works* v. *Luzier Personalized Cosmetics*, 76 F.3d 743, 750 (6th Cir. 1996).

"A party has no vested interest in any particular form of instructions," and a court's refusal to give a particular instruction is reviewed for an abuse of discretion. *Richards* v. *Attorneys' Title Guaranty Fund, Inc*., 866 F.2d 1570, 1573 (10th Cir.), cert. denied, 491 U.S. 906 (1989). Reversal is warranted where a district court refuses to give a requested instruction that is "(1) a correct statement of the law; (2) not substantially covered by the charge actually delivered to the jury; and (3) concerns a point so important in the trial that the failure to give it substantially impairs" the party's case. *United States* v. *Gunter*, 551 F.3d 472, 484 (6th Cir.), cert. denied, 130 S. Ct. 194 (2009).

B. The Court Erred In Refusing To Give A Reasonable Accommodation Instruction

For persons with a disability, failure to reasonably accommodate their disability constitutes "discrimination" under the FHA and similar statutes. See 42 U.S.C. 3604(f)(3)(B); *Kleiber* v. *Honda of Am. Mfg*., 485 F.3d 862, 868 (6th Cir. 2007) ("[F]ailing to make a reasonable accommodation falls within the ADA's definition of 'discrimination.'"); *Bryant Woods Inn* v. *Howard County*, 124 F.3d 597, 603 (4th Cir. 1997) ("Discrimination [under the FHA] is defined to include a refusal to make reasonable accommodations.") (internal quotation marks and citation omitted); *Shiring* v. *Runyon*, 90 F.3d 827, 831 (3d Cir. 1996) (noting that the Rehabilitation Act requires reasonable accommodation).

Federal courts of appeals have held that the refusal to allow disabled residents to have service animals may constitute a refusal to provide a reasonable accommodation. As the Seventh Circuit stated, "a deaf individual's need for the accommodation afforded by a hearing dog is, we think, *per se* reasonable within the meaning of the [FHA]." *Bronk* v. *Ineichen*, 54 F.3d 425, 429 (1995); see also *Majors* v. *Housing Auth. of DeKalb*, 652 F.2d 454, 458 (5th Cir. 1981) (noting an exception to a no pet policy was a reasonable accommodation under the Rehabilitation Act).

Moreover, the defendant's absolute refusals to consider the testers' requests for a guide dog and a medically-prescribed emotional support animal conflicted with HUD regulations, which specifically require housing providers to permit assistance animals where necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling. One of the examples included in 24 C.F.R. 100.204(b)(1) states that it is a violation "for the owner or manager of [an] apartment complex to refuse to permit [a blind] applicant to live in the apartment with a seeing eye dog." "[W]ithout the seeing eye dog," the regulation explains, "the blind person will not have an equal opportunity to use and enjoy a dwelling." *Ibid.* In addition, HUD's administrative decisions provide that emotional support animals may also be reasonable accommodations under the FHA. *HUD* v. *Riverbay*, No. 02-93-0320-1, 1994 WL 497536, at *9 (HUDALJ Sept. 8, 1994);

HUD v. *Dutra*, No. 09-93-1753-8, 1996 WL 657690, at *9 (HUDALJ Nov. 12, 1996).

Without a definition of "discrimination" that includes the statutory definition of reasonable accommodation, the jury was not "adequately inform[ed] * * * of the relevant considerations." *Blackwell*, 459 F.3d at 764 (citation omitted). Typically, a court should define important terms instead of merely repeating the statutory terminology. *United States* v. *Baird*, 134 F.3d 1276, 1283 (6th Cir. 1998) (reversing for the court's "failure to define" an essential element of the statute); see also *United States* v. *Aaron*, 590 F.3d 405, 409 (6th Cir. 2009). This is especially true where, as with "discrimination," the term has a particular meaning within the relevant legal context. "When technical legal usage gives ordinary words a specific definition which is distinct from the ordinary meaning of those words, a court should explain those terms for the jury." *Farmland Indus*. v. *Morrison-Quirk Grain Corp*., 987 F.2d 1335, 1343 (8th Cir. 1993). The meaning of discrimination here "permeated the entire case." *Dawson* v. *New York Life Ins. Co*., 135 F.3d 1158, 1167 (7th Cir. 1998). It is likely that, "[w]orking without a meaningful definition, the jury * * * judged all of the statements at issue without the necessary legal guidance." *Ibid*. Indeed, in this case, the jury's failure to find a violation of Section 3604(c) absent an instruction on reasonable accommodation was almost inevitable.

The plaintiff's requested instructions regarding accommodation should have been given because they were "(1) a correct statement of the law; (2) not substantially covered by the charge actually delivered to the jury; and (3) concern[ed] a point so important in the trial that the failure to give it substantially impair[ed]" the plaintiff's case. *Gunter*, 551 F.3d at 484 (citation omitted). The district court's refusal to issue the requested instruction on reasonable accommodation was therefore reversible error.

C. The Court Erred In Instructing The Jury It Must Find That The Testers' Claimed Disability Was The Motivating Factor For Defendant's Statements

The district court compounded its erroneous refusal to give a reasonable accommodation instruction by incorrectly requiring the jury find a discriminatory "motiv[e]." The judge rejected plaintiff's instruction on intent and charged the jury that, in order to find Murphy's statements violated Section 3604(c), it must conclude the testers' claimed disability was a "motivating factor" behind the statements.

By instructing the jury that it had to find that the testers' claims of disability were a "motivating factor" in defendant's statement, the court essentially added an element not required under Section 3604(c). The Section prohibits statements which "*indicate*[] any preference, limitation, or discrimination * * * *or an intention* to make any such preference, limitation, or discrimination." 42 U.S.C. 3604(c)

(emphasis added). If a statement is discriminatory on its face, the statute does not require any particular motive on the part of a speaker.

Courts, including this Court, "have allowed parties to establish a violation of Section 3604(c) by proving *either* an actual intent by a defendant to discriminate *or* by proving that '[t]o the ordinary reader the natural interpretation of the advertisements * * * is that they indicate a racial preference.'" *Housing Opportunities Made Equal* v. *Cincinnati Enquirer*, 943 F.2d 644, 646 (6th Cir. 1991) (emphasis added) (quoting *United States* v. *Hunter*, 459 F.2d 205, 215 (4th Cir.), cert. denied, 409 U.S. 934 (1972)). As this Court has stated, the provision covers "an advertisement that is obviously discriminatory," *or* one "intending to discriminate." *Id*. at 653. Therefore, when a statement expresses discrimination on its face, "inquiry into the author's professed intent is largely unnecessary." *Soules* v. *United States Dep't of Hous. & Urban Dev*., 967 F.2d 817, 824 (2d Cir. 1992); see also *Ragin* v. *Harry Macklowe Real Estate Co*., 6 F.3d 898, 906 (2d Cir. 1993). "[N]o showing of subjective intent to discriminate is needed to prove a violation of this section of the Fair Housing Act." *United States* v. *Security Mgmt. Co*., 96 F.3d 260, 269 (7th Cir. 1996); see also *Jancik* v. *Department of Hous. & Urban Dev*., 44 F.3d 553, 556 (7th Cir. 1995) ("every circuit that has considered a claim under section 3604(c) has held that an objective 'ordinary reader' standard should be applied"); *McNamara* v. *F 48*, No. 94-17106, 1996 WL 200212, at *1

(9th Cir. Apr. 24, 1996) (unpublished) (noting that parties agreed Section 3604(c) required no showing of intent, and stating "other courts have uniformly accepted the proposition").

In this case, the court's charge simply misstated the law. It "fails accurately to reflect the law," and warrants reversal. *Radvansky* v. *City of Olmsted Falls*, 496 F.3d 609, 617 (6th Cir. 2007). The error was clear, and it is obvious from the jury's later question about the definition of "motivating factor" that the issue likely affected the verdict and prejudiced the plaintiff's case. Tr. 297. "[T]he jury's request for further instruction should have alerted the district court * * * that the jury was considering the wrong issue in the case." *Baird*, 134 F.3d at 1283.

II

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR IN DISMISSING THE CHARGES AGAINST DEFENDANT MURPHY

A. Standard Of Review

The Court reviews a directed verdict *de novo*, using the same test as the district court. *Parker* v. *General Extrusions, Inc.*, 491 F.3d 596, 602 (6th Cir. 2007). It "must ascertain whether the evidence is such, without weighing the credibility of the witnesses or considering the weight of the evidence, that there is substantial evidence from which the jury could find in favor of the party against whom the motion is made." *Lewis* v. *Irvine*, 899 F.2d 451, 454 (6th Cir. 1990) (internal quotation marks and citation omitted).

B. The Court Erred In Directing A Verdict In Favor Of Murphy

The district court's directed verdict in favor of Murphy at the close of plaintiff's evidence was plainly incorrect, as corporate officers may be directly liable for their own violations of the FHA. See *Meyer* v. *Holley*, 537 U.S. 280, 283, 285 (2003) (holding ordinary agency principles apply under the FHA); *Jeanty* v. *McKey & Poague, Inc*., 496 F.2d 1119, 1120-1121 (7th Cir. 1974) (reversing district court's dismissal of FHA claims against agents, because "[i]t is well established that agents will be liable for their own unlawful conduct"). In *Moss* v. *Ole South Real Estate, Inc*., 933 F.2d 1300, 1312 (1991), the Fifth Circuit reversed the lower court decision where, as here, the court directed verdicts in favor of an individual broker and a sales agent acting for their respective corporations. The court noted it was "well settled law that when corporate officers directly participate in or authorize the commission of a wrongful act, even if the act is done on behalf of the corporation, they may be personally liable." *Ibid*.

As the Supreme Court has stated, the FHA "focuses on prohibited acts" rather than on the actors who are prohibited from committing them. *Meyer*, 537 U.S. at 285. Portions of the Act prohibit discrimination by "any person or other entity whose business includes engaging in residential real estate-related transactions," 42 U.S.C. 3605, and state that a "'[p]erson' includes one or more individuals, corporations, partnerships, associations," or other organizations. 42

U.S.C. 3602(d). The language of Section 3604(c) is broad, as it "does not provide any specific exemptions or designate the persons covered, but rather . . . applies on its face to anyone who makes prohibited statements." *United States* v. *Space Hunters, Inc*., 429 F.3d 416, 424 (2d Cir. 2005) (internal quotation marks and citation omitted). "Unlike other sections of the Fair Housing title, § 3604(c) does not provide any specific exemptions or designate the persons covered." *Hunter*, 459 F.2d at 210 (footnote omitted).

Courts have permitted FHA suits against corporations and their officers simultaneously. In *Space Hunters*, the Second Circuit held defendant and his corporation liable where defendant, as the corporation's sole employee, made discriminatory statements in refusing to allow disabled housing seekers access to his tenant placement service. 429 F.3d at 418-419 & n.2; see also *Tyus* v. *Urban Search Mgmt*., 102 F.3d 256 (7th Cir. 1996), cert. denied, 520 U.S. 1251 (1997). The ability to sue the corporation and the officer involved in discrimination is important because, depending on the corporation's assets and liabilities, a plaintiff may have a meaningful chance to recover only by suing the wrongdoer directly. In this case, Murphy is the person who made the discriminatory statements in question, and it is difficult to see how DJM's 4 Reasons should be the only defendant in a suit that is solely about Murphy's making those statements.

CONCLUSION

This Court should reverse the district court's judgment, and remand for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type volume limitation imposed by Federal Rules of Appellate Procedure 32(a)(7)(B) & 29(d). The brief was prepared using Microsoft Word 2007 and contains no more than 4500 words of proportionally spaced text. The type face is Times New Roman, 14-point font.

I further certify that the electronic version of this brief, prepared for submission via ECF, has been scanned with the most recent version of Trend Micro Office Scan (version 8.0) and is virus-free.

s/April J. Anderson
APRIL J. ANDERSON
Attorney

Date: July 15, 2010

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2010, I electronically filed the foregoing BRIEF FOR THE UNITED STATES AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT URGING REVERSAL with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/April J. Anderson
APRIL J. ANDERSON
Attorney

ADDENDUM

DESIGNATION OF RELEVANT RECORD DOCUMENTS

DOCKET NUMBER	DOCUMENT DESCRIPTION
1	Complaint and Jury Demand
46-1	Plaintiff's Trial Brief, Exhibit A, Jury Instructions
65	Plaintiff's Notice of Intent to Limit Scope of Claims at Trial
69	Trial Minutes
73	Plaintiff's Motion for a New Trial
81	Memorandum Opinion and Order Denying Plaintiff's Motion for a New Trial
93	Transcript of Jury Trial held on January 26, 2010
94	Transcript of Jury Trial held on January 27, 2010
95	Transcript of Jury Trial held on January 28, 2010
99-6	Plaintiff's Motion to Supplement the Record, Exhibit 6, Letters