

UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

HIGH PLAINS COMMUNITY)	Case No. 4:07CV3149
DEVELOPMENT CORP., INC., a)	
Nebraska Corporation,)	
)	
Plaintiff,)	
)	
v.)	BRIEF IN OPPOSITION TO
)	MOTION FOR
NEBRASKA DEPARTMENT OF)	SUMMARY JUDGMENT
HEALTH AND HUMAN SERVICES,)	
REGULATION AND LISCENSURE,)	
An agency of the STATE OF NEBRASKA,)	
<i>Et al.</i>)	
Defendants.)	

INTRODUCTION

High Plains Community Development Corp., Inc., (“High Plains”) Plaintiff in these proceedings, by and through its attorney, respectfully submits the following brief in opposition to each defendant’s motion for summary judgment: that of Hinn’s Mobile Homes Inc, Terry Hinn, Marilyn Hinn Hays, and Dr. Joann Schaefer. (Docs # 48, # 51, and # 56).

Generally, all defendants challenge High Plains’ standing to bring this action under the Fair Housing Act. The evidence before the Court shows, at a minimum, that there exist genuine issues of material fact regarding High Plains’ standing under either of two theories: the diversion of resources or the frustration of its purpose. Organizational standing may be established under either theory. *See Havens Realty Corp v. Coleman*, 455 U.S. 205 (1982).

While the defendants argue that the amount of resources which have been diverted or the degree to which High Plains’ mission has been frustrated is not adequately

defined, these are not the salient issues on a motion for summary judgment – which is whether a question of fact exists for trial. Even under the arguments presented by the defendants, a genuine issue of material fact is present here and, therefore, summary judgment is inappropriate.

Finally, defendant Terry Hinn argues that the record does not show his direct involvement with the alleged discriminatory activities. As discussed below, a genuine question of material fact exists on this issue as well.

For these reasons, High Plains respectfully asks that this Court deny each motion for summary judgment and allow these proceedings to continue to trial.

STATEMENT OF MATERIAL FACTS

As the factual basis opposing the Motion for Summary Judgment, High Plains relies on the documents and statements produced by High Plains, the admissions contained in the parties' pleadings and briefs, the defendants answers to interrogatives and any documents produced by defendants, as more fully described in the Index of Evidence previously filed herein as Filing No. 52. Pursuant to NELR 56.1(a), the material facts about which there is no genuine dispute are set forth below.

1. At all relevant times High Plains has been a non-profit, fair housing corporation in the Nebraska Panhandle Region. (Doc. #1, ¶ 12); (Doc. #50 , ¶ 1); (Doc. #53, ¶ 1); (Doc. #57, ¶ 1).
2. High Plains is funded by the United States Department of Housing and Urban Development and the Nebraska Department of Economic Development with a mission to advocate for the community, improve community development, promote fair housing for low-income individuals, to provide education and

- counseling regarding fair housing. (Doc. #52, Ex. 1, 28:1-3; 29:3-11); (Doc. #53, ¶ 1); (Doc. #57, ¶ 2).
3. High Plains uses funding it receives to engage in fair housing counseling and education, including both public awareness and direct educational, interaction with landlords and tenants. High Plains also processes complaints from individuals who allege they have been victims of housing discrimination and assists those individuals with processing their complaints with the appropriate state and/or federal agency. (Doc. #52, Ex. 1, 161:7-22).
 4. At all relevant times, the Department of Health and Human Services (“Department”), of which Dr. Schaefer serves as the chief administrative officer, has been an administrative agency of the State of Nebraska. One of the tasks of the Department is to issue licenses, which are required under Nebraska law, to mobile home parks operated in the State of Nebraska. (Doc. #1, ¶ 13) (Doc. #57, ¶ 4).
 5. The Department has the authority to deny, refuse to renew, suspend, or revoke a license to operate a mobile home park if the mobile home park fails to comply with published standards and regulations. Neb. Rev. Stat § 71-4631 (Doc. #1, ¶ 14); (Doc. #57, ¶ 5).
 6. Defendant Hinn’s Mobile Homes, Inc. (“Hinn’s Mobile Homes”) is a Nebraska corporation, organized and operated under the laws of Nebraska. (Doc. #50, ¶ 3); (Doc. #52, Ex. 5, ¶ 3); (Doc. #53, ¶ 4); (Doc. #57, ¶ 5).

7. Defendant Terry Hinn is the Secretary and Treasurer of Hinns's Mobile Homes and owns approximately 30% of the outstanding shares. (Doc. #50, ¶ 3); (Doc. #52, Ex. 5, ¶ 3); (Doc. #53, ¶ 4).
8. Terry Hinn is responsible for the day-to-day management of Hinn's Mobile Homes. (Doc. #50, ¶ 6); (Doc. #59-1, ¶ 4).
9. Hinn's Mobile Homes is the owner of Hinn's Mobile Home Park #2, which is located at 503 Maple Street in Chadron, Nebraska. This is the mobile home park that is referred to in the complaint and where the alleged housing discrimination occurred. (Doc. #1, ¶ 9); (Doc. #50, ¶ 3); (Doc. #52-6, ¶ 3); (Doc. #53, ¶ 5); (Doc. #57, ¶ 7).
10. Defendant Terry Hinn and Marilyn Hinn Hayes are natural persons who are residents of Nebraska. (Doc. #1, ¶ 8); (Doc. #50, ¶ 2); (Doc. #53, ¶ 2).
11. According to Terry Hinn, defendant Marilyn Hinn Hayes is in charge of the day-to-day operations of Hinn's Mobile Home Park #2. (Doc. #50, ¶ 6); (Doc. #52-6, ¶ 4).
12. The Department issued Mobile Home Park Inspection Reports dated September 19, 1995, June 1, 1995, July 24, 1996, April 24, 1996, June 12, 2002, June 19, 2002, July 2, 2003, August 5, 2003, November 14, 2003, April 13, 2004, April 14, 2004, June 16, 2005, November 8, 2005, and April 11, 2006 related to Hinn's Mobile Home Park #2. Each report found Hinns Mobile Home Park #2 to be in violation of state regulations applicable to mobile home parks. (Filing No. 1, ¶ 21); (Doc. #57, ¶ 9).

13. High Plains repeatedly informed the Department of the unsanitary conditions of the housing at Hinn's Mobile Home Park # 2 and further informed the Department of potential housing discrimination against Native American tenants residing in Hinn's Mobile Home Park #2. (Doc. #59-4, ¶ 5-6)
14. Leslie Lane is of Native American decent and was a tenant at Hinn's Mobile Home Park #2 during Fall 2006. (Doc. #59-3).
15. Rebecca Christian is a Fair Housing Counselor at High Plains whose job duties include supervising the fair housing division of High Plains, which includes promoting awareness of fair housing and assisting individuals with fair housing complaints. (Doc. #59-3, 20:18 – 24:19).
16. In September 2006, Rebecca Christian assisted Leslie Lane in preparing a housing discrimination complaint stemming from Ms. Lane's tenancy at Hinn's Mobile Home Park #2. (Doc. #59-3, Ex. 2).
17. In her housing discrimination complaint, Ms. Lane reported that she is Native American and stated that she believed she had been discriminated against by Marilyn Hinn and Shane Hays because of her race. (Doc. #59-3, Ex. 2).
18. Rebecca Christian assisted Ms. Lane in preparing her initial housing discrimination complaint and expended significant additional time related to the alleged housing discrimination at the Hinn's Mobile Homes Park #2. (Doc. #59-3, Ex. 2).
19. In a letter dated September 15, 2006, and prepared in connection with Ms. Lane's housing discrimination complaint, Ms. Lane reported deplorable conditions in mobile home which she rented from Hinn's Mobile Homes, including: leaking

- and unsafe plumbing the required Ms. Lame to crawl under the mobile home to turn water off and on when needed, lack of exterior doors, broken windows, and trash and debris littering the yard. (Doc. #59-3). These conditions violate Nebraska regulations related to mobile home parks.
20. High Plains' Case Detail Report indicates Rebecca Christian spent approximately 100 hours of staff time in connection with Leslie Lame's housing discrimination complaint against Hinn's Mobile Home and its agents. (Doc. 59-3, Ex 1).
21. As a result of High Plains' assistance and work with Ms. Lame, the Nebraska Equal Opportunity Commission initiated a complaint proceeding against Hinn's Mobile Homes. (Doc. #59-3, Ex. 2).
22. High Plains' involvement with Leslie Lame and Hinn's Mobile Home Park resulted in a diversion of significant resources from High Plains' mission. (Doc. #59-3, 113:9-13). High Plains calculated the total value of the resources related to investigating the housing discrimination complaint in excess of 267 employee hours with a value of \$3,563.20, as of November 16, 2007. (Plaintiff's Ex. 3, Ex. 3).
23. Rebecca Christian testified that High Plain's mission has been frustrated by the alleged housing discrimination at the Hinn's Mobile Homes Park #2 due to damage to High Plains' reputation. (Doc. #59-3, 113:1-15).

JURISDICTION AND VENUE

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331 and 42 U.S.C. §3613. This action arises under the laws of the United States of America, specifically 42 U.S.C. §3613, the Fair Housing Act, as amended. Plaintiff seek relief

under the Fair Housing Act, 42 U.S.C. §3604 based upon two theories. First, that defendants Hinn's mobile Homes, Inc, Terry Hinn and Marilyn Hinn Hayes engaged in the discriminatory practice of providing substandard housing to Native American tenants at a mobile home park owned by Hinns Mobile Homes, Inc. and located at 5th and Maple, Chadron NE. Second, that defendant Schaefer, and the department which she administers, has adopted an unwritten rule, policy or custom of refusing to apply Nebraska regulations regarding safety and sanitary conditions of mobile home parks, and specifically the mobile home park owned by Hinn's Mobile Homes, Inc. on the basis of the race of the tenants living at these properties.

Venue is proper in this district pursuant to 28 U.S.C. §1391(b)(1), as all the Defendants reside in the State of Nebraska. Venue is also proper in this district under 28 U.S.C. §1391(b)(2) as the events giving rise to the claim occurred in this district.

STANDARD OF REVIEW

Summary judgment pursuant to Fed. R. Civ. Proc. 56 is appropriate when it is clear from “ the pleadings, depositions, answers to interrogatories, admissions on file, together with affidavits, if any...that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 106 S. Ct. 2548, 2552 (1986); *Phillip v. Ford Motor Co.*, 328 F. 3d 1020, 1023 (8th Cir. 2003); see also *Johnson v. Outboard Marine Corp.*, 172 F. 3d 531, 535 (8th Cir. 1999).

The proponent of a motion for summary judgment “bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of “the pleadings, depositions, answers to interrogatories, and admissions on file, together

with the affidavits, if any” which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*, 477 U.S. at 323.

SUMMARY OF ARGUMENT

While the defendants have advanced differing arguments, each defendant, in essence, argues that a summary judgment is appropriate at this point in these proceedings because Plaintiff has failed to produce evidence of harm, and therefore lacks standing in these proceedings. Defendant Schaefer describes High Plains’ injuries as “clearly speculative, conjectural”. (Doc. #57 at 15). Defendants Hinns Mobile Homes and Marilyn Hinns contend that High Plains’ calculation of diverted resources is “clearly speculative, conjectural and do not establish the drain on High Plains’ resources.” (Doc. #53 at 19). Defendant Terry Hinn argues that High Plains “has not demonstrated any distinct palpable injuries that are fairly traceable to Terry Hinn’s actions.” (Doc. #50 at 2). In each argument, the defendant does not contend that there is no evidence of harm, but rather that what evidence exists either demonstrates an inadequate degree of injury or is “speculative”. The degree of injury is a question of fact, and defendants have not met their burden to show they are entitled to a summary judgment.

Contrary to the assertions made by each defendant in support of their motions for summary judgment, the evidence before the Court at this point shows that Plaintiff has suffered an injury and has standing in these proceedings. This injury consists of the diversion of resources which has been occasioned by the defendants’ behavior. In addition, the evidence raises a legitimate question of fact as to whether Plaintiff’s mission

as a fair housing center has been frustrated by the defendants' actions. Therefore, a summary judgment is not appropriate at this stage in the proceedings.

STATUTORY AND LEGAL BACKGROUND

The Fair Housing Act specifically contemplates enforcement suits by non-profit fair housing organizations, such as High Plains Community Development Corp. The Act authorizes a civil action by "[a]n aggrieved person," 42 U.S.C. 3613(a); defines an "aggrieved person" as "any person who * * * claims to have been injured by a discriminatory housing practice," 42 U.S.C. 3602(i)(1); and defines a "person" to include "associations" and "unincorporated organizations," 42 U.S.C. § 3602(d).

In enacting the Fair Housing Act, Congress intended to define standing as broadly as permitted by Article III of the Constitution. *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 209 (1972). The sole requirement for standing to sue under the Fair Housing Act "is Article III minimal injury in fact: that the plaintiff allege that as a result of the defendant's actions he suffered a 'distinct and palpable injury.'" *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 372 (1982) (holding that "Congress intended standing * * * to extend to the full limits of Art. III and that the courts accordingly lack the authority to create prudential barriers to standing in suits brought under that section") (internal quotation marks and citation omitted). Accordingly, a fair housing organization establishes standing when it suffers "a concrete and demonstrable injury with a subsequent drain on the organization's resources" or an impairment in its non-economic interest in encouraging open housing. *Id.* at 370.

Under Article III, the essence of standing is, "whether the litigant is entitled to have the courts decide the merits of the dispute or particular issues." *Warth v. Seldin*, 422

U.S. 490, 498 (1975). To establish standing to sue under Art. III, a plaintiff is required to allege an “injury in fact.” *Havens* at 376; *Warth* at 508; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

This injury in fact requirement is satisfied when a plaintiff has suffered a “concrete and particularized” injury in fact that is fairly traceable to the defendant's conduct and likely to be redressed by a favorable decision. See *Lujan*, 504 U.S. 555, 560 (1992).

In *Havens Realty Corp. v. Coleman*, *supra*, the Supreme Court applied these well established principles to a lawsuit brought by a fair housing organization under the Fair Housing Act. The plaintiff organization sent testers to investigate the allegedly discriminatory practices of a housing complex and, based on the findings of the investigation, brought suit. In its complaint, the organization alleged that

Plaintiff HOME has been frustrated by defendants' racial steering practices in its efforts to assist equal access to housing through counseling and other referral services. Plaintiff HOME has had to devote significant resources to identify and counteract the defendant's [sic] racially discriminatory steering practices.

Havens, 455 U.S. at 379.

The Supreme Court concluded that the allegations of the defendant's actions did impair the organization's mission and that as a result of defendant's actions:

[T]here can be no question that the organization has suffered injury in fact. Such concrete and demonstrable injury to the organization's activities-with the consequent drain on the organization's resources-constitutes far more than simply a setback to the organization's abstract social interests.

Ibid.

A threatened injury may also constitute an injury in fact. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982). *Defenders of Wildlife, Friends of Animals and Their Environment v. Hodel*. 851 F.2d 1035, 1039 (8th Cir. 1988). For instance, the Eight Circuit Court of Appeals found allegations by an organization that the *proposed* development of the defendant would injure the organization by causing loss of off-tract land use by increasing the increasing the air, traffic, and noise pollution and by prohibiting public use of land for park were sufficient to give the organization standing. *Coalition for the Environment v. Volpe*, 504 F. 2d 156 (8th Cir. 1974).

ARGUMENT

1. **The evidence before the Court establishes High Plains' standing under *Havens Realty Corp. v. Colman*, 455 U.S. 363 (1982), therefore Defendants' motions for summary judgment should be overruled.**

The Defendants have moved for summary judgment challenging High Plains' standing in these proceedings. Contrary to Defendants' arguments, High Plains has standing under the Fair Housing Act, or at a minimum there are genuine issues of material fact based on the evidence before the Court regarding this issue. Therefore, Defendants' motions for summary judgment should be overruled.

High Plains is a nonprofit fair housing organization whose mission is to promote fair housing opportunities in the State of Nebraska. The evidence before the Court shows that High Plains has diverted resources from its primary mission of education on fair housing issues to address the specific discriminatory activities of the Defendants. Specifically, High Plains has diverted resources to address alleged discriminatory actions

of the Hinns Mobile Homes, Terry Hinn and Marilyn Hinn, in renting substandard properties to Native Americans, and the application by Schaefer, in her capacity as administrator of the Dept. of Health and Human Services, of a discriminatory policy or custom which allowed Hinns Mobile Homes Park # 2 to remain open despite a history of regulatory violations. The record directly shows that High Plains has expended resources to address these allegedly unlawful actions. Consequently, under *Havens*, such expenditure of resources establishes High Plains' standing.

In *Havens*, the plaintiffs sued a realty company and one of its employees for discrimination against African-American home seekers. The plaintiffs included a fair housing organization, Housing Opportunities Made Equal (“HOME”). HOME's mission was to make equal opportunity housing a reality. *Havens* at 368. Just as is true of HPCDC, HOME's activities “included the operation of a housing counseling service and the investigation and referral of complaints concerning housing discrimination.” *Id.* Similarly, as in these proceedings, HOME investigated defendants' real estate practices and sued after their investigations revealed suspected discriminatory conduct.

HOME's complaint alleged that it had been “frustrated by defendants' racial hiring practices in its efforts to assist equal access to housing through counseling and other referral services” and “had to devote significant resources to identify and counteract the defendant's racially discriminatory steering practices.” *Id.* The court concluded that if the allegations were true, there was no doubt that the organization suffered injury in fact: “In determining whether HOME has standing under the Fair Housing Act, we conduct the same inquiry as in the case of an individual: Has the plaintiff ‘alleged such a personal stake in the outcome of the controversy’ as to warrant

his invocation of federal-court jurisdiction” ‘ *Havens* at 378-79 (citations omitted). Under this test, standing clearly existed: “If, as broadly alleged, petitioners' steering practices have perceptibly impaired HOME's ability to provide counseling and referral services for low-and moderate-income home seekers, there can be no question that the organization has suffered injury in fact. Such a concrete and demonstrable injury to the organization's activities-with the consequent drain on the organization's resources-constitutes far more than simply a setback to the organization's abstract social interests.” *Havens* at 379.

The drain on resources in *Havens*, which was sufficient to establish standing, was caused by the diversion of HOME’s resources from counseling and education to efforts to identify and counteract the defendant’s discriminatory housing practices through an investigation. *See Central Alabama Fair Housing Center v. Lowder*, 236 F.3d 629, 642 (11th Cir. 2000). “Because testing helps identify discrimination, the injuries attributable to the discrimination identified by the testing give an organization standing.” *Id.*

Courts of appeals, including the Eighth Circuit, have held that fair housing organizations have standing when their resources are diverted. As observed by Defendant Schaefer, “in deciding organizational standing questions after *Havens*, appellate courts have generally agreed that where an organization alleges or is able to show – depending on the state of the proceeding – that it has devoted additional resources to some area of its effort in order to counteract discrimination, the organization has met the Article III standing requirement.” (Doc. #57 at 11-12, quoting *Fair Housing Council of Suburban Philadelphia v. Montgomery Newspapers*, 141 F. 3d 71, 78 (3rd Cir. 1998).

A majority of the circuits that have addressed the question have interpreted *Havens* as providing for standing where a fair housing organization diverts its resources

to efforts to identify and counteract discrimination. *See, e.g., Lowder*, 236 F.3d at 639, *Arkansas ACORN Fair Housing, Inc. v. Greystone Co. LTD.*, 160 F. 3d 433, 434 (8th Cir. 1998); *Ragin v. Harry Macklowe Real Estate Co.*, 6 F. 3d 898, 905 (2d Cir. 1993); *Hooker v. Weathers*, 990 F. 2d 913, 915 (6th Cir. 1993); *Village of Bellwood v. Dwivedi*, 895 F. 2d 1521, 1526 (7th Cir. 1990).

In *Village of Bellwood v. Dwivedi*, the Seventh Circuit followed *Havens* and held a fair housing organization has standing when it diverts resources from counseling to legal efforts directed against discrimination. The Seventh Circuit affirmed the fair housing organization's standing:

Havens makes clear ... that the only injury that need be shown to confer standing on a fair-housing agency is deflection of the agency's time and money from counseling to legal efforts directed against discrimination. These are the opportunity costs of discrimination, since although counseling is not directly impaired directly there would be more of it were it not for the defendant's discrimination.

Id. at 1526.

The Ninth Circuit has also ruled that an organization has standing when it diverts resources that could have been expended in other ways to address a defendant's unlawful conduct. *See El Rescate Legal Services, Inc. v. Executive Office of Immigration Review*, 959 F. 2d 742, 748 (9th Cir. 1991). In short, under *Havens* and the majority of Courts of Appeal that have considered this issue, including the Eighth Circuit, a fair housing organization has standing when there is a draining of organizational resources and impairment of the ability to assist and counsel individuals on fair housing issues. The facts in these proceedings show without any doubt that Plaintiff has expended resource to investigate and identify housing discrimination in this case. In fact, the

defendants themselves provide testimony from Ms. Christian demonstrating that High Plains did divert resources to investigating housing discrimination related to Hinn's Mobile Home Park # 2. The Brief of Defendants Marilyn Hinn Hays and Hinn's Mobile Homes, Inc., in support of Motion for Summary Judgment at page 14-15 quotes Ms. Christian's account of her work on behalf of Ms. Lane and stemming from Ms. Lane's complaints of housing discrimination.

The evidence before the Court clearly shows that High Plains has expended resources to counteract and address discriminatory housing practices. The record shows that High Plains' resources, which High Plains itemized as \$4,862.20 as of November 17, 2007, were diverted to investigating and other efforts to counteract the alleged discrimination. (Doc. #59-3, Ex. 3). These resources were used to take a complaint from Ms. Lane alleging housing discrimination by Marilyn Hinns at a property owned by Hinns Mobile Homes Inc, a company managed by Terry Hinn. This is a licensed mobile home park that operates under the auspices of a license granted by the Dept. of Health and Human Services, of which Schaefer is the chief administrator.

While Defendants argue that High Plains has failed to itemize these amounts, the record does contain evidence of an expenditure and there is no factual dispute that these resources were expended. Whether or not the amount of the expenditure is sufficient to establish a diversion of resources is more accurately a question of fact than one of law, and as such would obviate the entry of a summary judgment. Therefore, Defendants' motions for summary judgment challenging High Plains' standing should be overruled.

2. Plaintiff's standing is further premised on the frustration of Plaintiff's mission as a fair housing organization; as a genuine issue of material fact exists on this issue, summary judgment is inappropriate.

A nonprofit corporation whose purpose is to make equal opportunity in housing a reality in a particular geographic area has standing in its own right to challenge an allegedly unlawful and discriminatory housing practice, where the organization has alleged that the practices have perceptibly impaired its ability to provide counseling and referral services for low- and moderate- income home seekers. The fact that the alleged injury results from the organization's non-economic interest in encouraging fair housing does not affect the nature of the injury suffered. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379.

High Plains receives funding to promote fair housing education and awareness. High Plains has expended resources to respond to fair housing complaints related to the Hinns Mobile Home Park on 5th and Maple in Chadron, NE, and as a result has been forced to engage in activities that are not related to fair housing education and awareness. Rebecca Christian described the mission of High Plains as follows:

Q: And I believe that you describe earlier on the mission of High Plains as outreach and education about fair housing; is that correct?

A: Right.

Q: Is that a fair assessment of the mission?

A: The mission is to – yes, it's to – it's to support, enhance community development, helping people, particular people with low incomes to moderate incomes and providing fair housing education, housing counseling education.

(Doc. #59-3, 160:16-162:3).

High Plains itemized expenses incurred in connection with the alleged discriminatory conduct associated with the Hinns Mobile Home Park # 2. This expenditure required the use of funds and resources which otherwise would have been applied to High Plains' mission to educate and promote fair housing opportunities. While defendants argue that High Plains has failed to articulate the exact mission or purpose which has been frustrated, they ignore the fact that the activity associated with researching and attempting to address the discriminatory conduct at the mobile home park is activity, with a consequent expenditure of resources, which would not have otherwise been undertaken absent defendant's alleged discriminatory behavior.

The record shows that High Plains has been compelled to engage in activities to redress the alleged discriminatory behavior and that such activities are contrary to the organization's mission of promoting fair housing. To the extent that there is any dispute regarding the frustration of High Plains' purpose, it is again one of degree. Therefore, entry of a summary judgment would be inappropriate.

3. The evidence shows a genuine issue of material fact regarding Terry Hinn's involvement with the operation of the Hinn's Mobile Homes Park, therefore summary judgment would be inappropriate.

The alleged discriminatory acts have taken place in a mobile home park owned by Hinn's Mobile Homes. (Doc. #1, ¶ 9); (Doc. #50, ¶ 3); (Doc. #52-6, ¶ 3); (Doc. #53, ¶ 5); (Doc. #57, ¶ 7). Terry Hinn is a shareholder and officer of this corporation. (Doc. #50, ¶ 3); (Doc. #52, Ex. 5, ¶ 3); (Doc. #53, ¶ 4). In his brief in support of motion for summary judgment, Terry Hinn argues that summary judgment is appropriate as to him

because “Terry Hinn is in charge of the day-to-day operations of Hinn’s Mobile Homes, Inc, which does not involve overseeing the day-to-day operations of any mobile home parks. Terry Hinn’s duties are focused mainly on managing and overseeing the sales of manufactured homes.” (Doc. # 50 at 8) In his brief, Terry Hinn asserts that “Marilyn Hinn Hayes is in charge of the day-to-day operations of the mobile home park referenced in Plaintiff’s complaint.” (Doc. #50 at 8).

The factual question of Terry Hinn’s involvement in the day-to-day operations of the mobile home parks owned by Hinn’s Mobile Homes Inc. is not as settled as represented by Mr. Hinn in his affidavit. According to James Eubanks, a former employee of Hinns Mobile Homes, Terry Hinn manages all the rental property owned by Hinn’s Mobile Homes. (Doc. #59-2, ¶ 6). Mr. Eubanks describes activities that are generally performed by landlords. In any event, even under the facts as presented and argued by Defendant Terry Hinn, genuine issues of material fact remain regarding his potential liability.

The evidence before the Court creates genuine issues of material fact regarding Terry Hinn’s involvement and potential liability. The mobile homes at issue in these proceedings are located on land owned by Hinn’s Mobile Homes, a company that Terry Hinn runs on a day-to-day basis and of which he is part owner. The reasonable inference to be drawn from Terry Hinn’s own description of these relationships is that he is either knowledgeable of or responsible for the activities on the real estate owned by Hinns Mobile Homes Inc. According to Mr. Eubanks, Terry Hinn is directly involved with the rental of mobile homes operated by Hinns Mobile Homes, Inc.

"[T]raditional vicarious liability rules ordinarily make principals or employers vicariously liable for acts of their agents or employees in the scope of their authority or employment" *See Meyer v. Holley*, 123 S.Ct. 824, 829, 154 L. Ed. 2d 753 (2003) (noting that and quoting in support of this proposition *New Orleans, M & C R Co. v. Hanning*, 82 U.S. 649, 21 L. Ed. 220 (1872), to the effect that "[t]he principal is liable for the acts and negligence of the agent in the course of his employment, although he did not authorize or did not know of the acts complained of").

These facts before the Court establish a genuine issue of material fact regarding Terry Hinns involvement with the management and operations of Hinns Mobile Homes , consequently, summary judgment would not be appropriate.

4. Summary judgment as to defendant Schaefer is inappropriate as there exist genuine issues of material fact regarding the presence of a custom, policy or practice of deciding to enforce regulations related to mobile home parks on the basis of race.

Defendant Schaefer argues that High Plains is “unable to identify any specific damage to High Plains’ reputation caused by conduct alleged in the Amended Complaint, and with respect to its claims about the amount of time spent with Lane, Christian admitted that High Plains does not have any specific criteria it uses to determine whether or not a particular case has required “too much” time.” (Doc. #57 at 13). Schaefer then asserts that “High Plains’ figures are clearly speculative, conjectural and do not establish the drain on High Plains resources required to prove a palpable injury-in-fact traceable to Schaefer or the other defendants.” (Doc. #57 at 15).

There is no dispute that the Department issued an operating permit for Hinn’s Mobile Homes Park # 2 in March 2002 allowing these defendants to operate a mobile

home parks in Chadron, NE and has continuously renewed this permit annually since that time. (Doc. #57 at 5, ¶ 8). These renewals have been granted even though the Department issued numerous inspection reports detailing violations of Nebraska's regulatory code. (Doc. #57 at 5, ¶ 9). As a matter of law, the Hinn's Mobile Homes Park # 2 could not operate without a valid permit issued by the Department.

Prior to March 2002, High Plains communicated with the Department to express its concerns about the condition of the Hinn's Mobile Homes Park # 2 and the potential of housing discrimination. (Doc. #59-4, ¶ 5-6). In an email dated March 1, 2002, the Department stated that corrective action would not be taken because doing so would involve opening a "pandora's box." (Doc. #59-4).

There is plainly a question of fact at this point in the proceedings regarding the basis of the Department's refusal to enforce its own regulations. From the communication and correspondence between High Plains and the Department it may be inferred that the Department's decision not to enforce its regulations is based, in whole or part, on a consideration other than the validity of the regulations of their application to the Hinn's Mobile Home Park. Consequently, there is a question of fact in these proceedings as to the Department's motives, and summary judgment is not appropriate. The matter should proceed to trial.

CONCLUSION

For the foregoing reasons, there exist genuine issues as to material facts in dispute in these proceedings. Accordingly, the Defendants are not entitled to judgment as a matter of law and Plaintiff's cause of action under the Fair Housing Act, 42 U.S.C. 3601 *et. seq.* should be allowed to proceed.

Respectfully submitted this 6th day of March 2008

By: /s/ Steven M. Virgil

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CERTIFICATE OF SERVICE

I hereby certify that on March 6, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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