

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

HIGH PLAINS COMMUNITY )  
DEVELOPMENT CORP., INC., a )  
Nebraska Corporation, )

Plaintiff, )

vs. )

DR. JOANN SCHAEFER, CHIEF )  
MEDICAL OFFICER, DIVISION OF )  
HEALTH, NEBRASKA DEPARTMENT )  
OF HEALTH AND HUMAN SERVICES, )  
in her official capacity as administrator )

and )

TERRY HINN & MARILYN HINN )  
HAYES, Natural Persons )

and )

HINNS MOBILE HOMES, INC., a )  
Nebraska Corporation )

Defendants. )

Case No. 4:07-CV-03149

**BRIEF OF  
DEFENDANT TERRY HINN  
IN SUPPORT OF  
SUMMARY JUDGMENT**

**INTRODUCTION**

\_\_\_\_ Plaintiff High Plains Community Development Corp., Inc. (“Plaintiff”) is a Nebraska non-profit corporation which focuses on fair housing and civil rights issues. Plaintiff alleges that the Defendants violated the Federal Fair Housing Act (“FHA”) and the Nebraska Fair Housing Act (“NFHA”) by engaging in discriminatory housing practices. In particular, Plaintiff alleges

that Defendant Terry Hinn owns and rents residential property in Nebraska, and that Terry Hinn owns, operates, and manages Hinn's Mobile Homes, Inc. According to Plaintiff, Terry Hinn engaged in discriminatory housing practices by renting mobile homes to Native Americans which failed to meet minimum housing quality standards under Nebraska law. These mobile homes are located in a mobile home park owned by Hinn's Mobile Homes, Inc. in Chadron, Nebraska. Plaintiff claims that it has suffered a concrete and demonstrable injury in fact because of Terry Hinn's discriminatory actions, and that it has expended resources directly to counteract the effect of such conduct.

\_\_\_\_\_ However, Plaintiff lacks organizational standing to raise the claims alleged in its Complaint, and Plaintiff is not the real party in interest. In addition, this Court does not have subject matter jurisdiction over the Plaintiff's claims. Plaintiff has not presented evidence of a single discriminatory act of Terry Hinn, nor any facts to quantify the resources that were expended to counteract any of Terry Hinn's actions. Moreover, Plaintiff has not demonstrated which resources were used in identifying Terry Hinn in particular as an alleged violator of the FHA or NFHA, in monitoring or investigating Terry Hinn, in determining the discriminatory effects specifically attributable to Terry Hinn's conduct, or in counteracting such discriminatory effects. Simply stated, Plaintiff has not demonstrated any distinct palpable injuries that are fairly traceable to Terry Hinn's actions. Thus, the uncontroverted evidence establishes that the Plaintiff has not satisfied the injury in fact requirement for organizational standing under the FHA and that this Court does not have subject matter jurisdiction over Terry Hinn. Therefore, there is no genuine issue of material fact as to whether Plaintiff has organizational standing, or

whether the court has subject matter jurisdiction. Accordingly, Terry Hinn is entitled to summary judgment as a matter of law.

**STATEMENT OF MATERIAL FACTS**  
**TO WHICH THERE ARE NO GENUINE ISSUES**

1. \_\_\_\_\_ Plaintiff High Plains Community Development Corp., Inc. is a non-profit fair housing organization, organized and operated under the laws of Nebraska. (Filing # 1, ¶ 6).

2. Defendant Terry Hinn and Marilyn Hinn Hayes are natural persons who are residents of Nebraska. (Filing #1, ¶ 8).

3. Defendant Hinn's Mobile Homes, Inc. is a Nebraska Corporation, organized and operated under the laws of Nebraska. Lloyd T. Hinn is the president of Hinn's Mobile Homes, Inc., and he owns approximately 52% of the outstanding shares. Terry Hinn is the Secretary and Treasurer of Hinn's Mobile Homes, Inc., and owns approximately 30% of the outstanding shares. Lloyd T. Hinn, Jr. owns approximately 6% of the outstanding shares. Hinn's Mobile Homes, Inc. is the owner of Hinn's Mobile Home Park #2, which is located at 505 Maple Street in Chadron, Nebraska. This is the mobile home park that Plaintiff refers to in its Complaint. (Filing #1, ¶ 9); (Aff. of T. Hinn, ¶ 3).

4. On June 12, 2007, Plaintiff filed suit against the Defendants in the United States District Court for the District of Nebraska alleging that the Defendants violated the Federal Fair Housing Act ("FHA") and the Nebraska Fair Housing Act ("NFHA") by engaging in discriminatory housing practices. Plaintiff alleges that the Defendants provided substandard housing to Native American tenants based on race. (Filing #1, ¶ 1).

5. Rebecca Christian (“Christian”), program coordinator and fair housing counselor for the Plaintiff, testified that the only real estate related to Plaintiff’s Complaint is the mobile home park located at Fifth and Maple Streets in Chadron, Nebraska. Christian also testified that former tenant Leslie Lame is the alleged victim of the Defendants’ discriminatory conduct that provided the sole basis for Plaintiff’s Complaint. According to Christian, she was the only representative of the Plaintiff who worked with Leslie Lame. (Dep. of R. Christian, p 54: 8-17; p. 55: 1-22; p. 68: 11-17; p. 105: 9-25; p. 106: 1-4).

6. Defendant 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. Marilyn Hinn Hayes is in charge of the day-to-day operations of the mobile home park referenced in Plaintiff’s complaint. Terry Hinn does not own any of the mobile homes in the mobile home park that Plaintiff refers to in its Complaint. Terry Hinn did not rent any of the mobile homes to Leslie Lame, nor did he have any interactions with Leslie Lame, either before, during, or after the time that she allegedly lived in the mobile home park. (Aff. of T. Hinn, ¶ 4).

7. As the primary counselor on Leslie Lame’s case, Christian never communicated with Terry Hinn. According to Christian, Terry Hinn had nothing to do with the Leslie Lame Complaint, and Terry Hinn was named as a defendant because he was identified as one of the managers, landlords, or owners of the mobile homes. Leslie Lame only dealt with Marilyn Hayes and her husband, and it was Marilyn who allegedly rented the trailer to Leslie Lame.

(Dep. of R. Christian, p. 106: 19-25; p. 107: 1-24; p. 108: 23-25; p. 109: 1-3; p. 138: 14-19; p. 139: 25; p.140: 1-6).

8. Plaintiff also produced a “Fair Housing Organizational Damages Worksheet” in response to Terry Hinn’s discovery requests. This document states that Christian spent 100 hours at a rate of \$18.48 per hour, and Marguerite Vey-Miller spent 167 hours at a rate of \$25.60 per hour working on the Leslie Lame case. According to the document, this resulted in a total diversion of resources for staff time in the amount of \$3,563.20. The document also states that testing and investigative expenses resulted in a diversion of resources in the amount of \$1,299.00. There is nothing in this document demonstrating which portion of these organizational damages are traceable to any of Terry Hinn’s alleged conduct. Plaintiff has also produced Christian’s “Case Detail Report” for Leslie Lame, which describes the billable time that Christian spent on Leslie Lame’s case. This document does not refer to Terry Hinn or any of his alleged discriminatory conduct. (Dep. of R. Christian, p. 69-73, Ex. #2; p. 119: 13-25; 120:1-2, Ex. #3).

#### **STANDARD OF REVIEW**

Under the Federal Rules of Civil Procedure, summary judgment should be granted if, viewing the facts and inferences in the light most favorable to the nonmoving party, “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed. R. Civ. P. 56 (c); *Harder v. Acands*, 179 F.3d 609, 612 (8th Cir. 1999).

**ARGUMENT**

**I. BECAUSE PLAINTIFF HAS NOT MET ITS BURDEN OF ESTABLISHING ORGANIZATIONAL STANDING IN THIS MATTER, DEFENDANT TERRY HINN IS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW.**

A plaintiff must demonstrate an injury in fact in order to establish organizational standing under the FHA. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 102 S.Ct. 1114 (1982). Fair housing organizations satisfy this requirement when they devote “significant resources to identify and counteract a defendant’s unlawful practices.” *Acorn Fair Housing, Inc. v. Greystone*, 160 F.3d 433, 434 (8th Cir. 1998) (quotes omitted). The party invoking federal jurisdiction bears the burden at the summary judgment stage of “establishing injury in fact by alleging specific facts that taken as true demonstrate the plaintiff suffered distinct and palpable injuries that are fairly traceable to the defendant’s actions.” *Id.* (quotes omitted). Although the “deflection of an organization’s monetary and human resources from counseling to educational programs to legal efforts aimed at combating discrimination” is sufficient to constitute actual injury, “the injury must be traceable to some act of the defendant.” *Id.* at 434-435. Thus, the plaintiff must demonstrate specific facts which establish “distinct and palpable injuries” fairly traceable to the defendant’s discriminatory conduct. *Id.* at 435.

Following the Supreme Court’s holding in *Havens*, the Eighth Circuit further illuminated the organizational standing requirements in FHA cases. In *Acorn*, a fair housing organization filed suit against a development company alleging that the company violated the FHA because it did not include African-American Models or an Equal Housing Opportunity logo in its

Advertisements. The organization claimed that the company's advertisements injured the organization's ability to promote fair housing and hindered its ability to assist minority home seekers. The organization sought damages for staff and volunteer time attributable to monitoring and investigating the company and defraying the costs of efforts and programs frustrated by the company's alleged discriminatory conduct. At the summary judgment stage, the organization produced an affidavit of one of its employees indicating the minimum number of hours per month that staff members spent monitoring advertising of housing providers and identifying violators of fair housing laws. The affidavit also indicated the minimum hours per month that the company spent counteracting the effects of discriminatory advertising practices through education and outreach, and testing persons or entities which violated the fair housing laws. The district court granted the company's motion for summary judgment and the organization appealed.

On appeal, the Eighth Circuit noted that the organization provided general information demonstrating the resources spent each month monitoring advertisements for numerous housing providers and counteracting the effects of discriminatory advertising. However, the Court emphasized that the organization presented no facts to quantify the resources that the organization expended to counteract a single act of the company's alleged discriminatory conduct. Thus, the Court held that the organization did not satisfy its burden at the summary judgment stage because there were no specific facts establishing the organization's distinct and palpable injuries fairly traceable to the company's advertisements.

In this case, Rebecca Christian (“Christian”), program coordinator and fair housing counselor for the Plaintiff, states in her deposition that the only real estate related to Plaintiff’s complaint is the mobile home park located at Fifth and Maple Streets in Chadron, Nebraska (Dep. of R. Christian, p 54: 8-17; p. 55: 1-11). Christian also stated in her deposition that Leslie Lame is the alleged victim of the Defendants’ discriminatory conduct that provided the basis for Plaintiff’s complaint. (Dep. of R. Christian, p. 55: 12-22; p. 105: 9-25; p. 106: 1-4). According to Christian, she was the only representative of the Plaintiff who worked with Leslie Lame. (Dep. of R. Christian, p. 68: 11-17).

However, Christian states that Terry Hinn was not related to the Leslie Lame Complaint, and that Terry Hinn was only named as defendant because he was identified as one of the managers, landlords, or owners of the mobile homes. (Dep. of R. Christian, p. 106: 19-25; p. 107: 1-24; p. 108: 23-25; p. 109: 1-3). However, 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. (Aff. of T. Hinn, ¶ 4). Terry Hinn’s duties are focused mainly on managing and overseeing the sales of manufactured homes. *Id.* On the other hand, Marilyn Hinn Hayes is in charge of the day-to-day operations of the mobile home park referenced in Plaintiff’s complaint. *Id.* Terry Hinn does not own, and has never owned any of the mobile homes in the mobile home park that Plaintiff refers to in its Complaint. *Id.* Terry Hinn never rented any of the mobile homes to Leslie Lame, and he has never interacted with Leslie Lame. *Id.* As the primary counselor on Leslie Lame’s case, Christian never communicated with Terry Hinn. (Dep. of R. Christian, p. 138: 14-19). Moreover, Leslie Lame only dealt with Marilyn

Hayes and her husband, and it was Marilyn who allegedly rented the trailer to Leslie Lane. (Dep. of R. Christian, p. 139: 25; p.140: 1-6). Consequently, the Plaintiff has not demonstrated specific facts establishing the organization's distinct and palpable injuries that are fairly traceable to any of Terry Hinn's conduct.

Plaintiff also produced a "Fair Housing Organizational Damages Worksheet" in response to Hinn's discovery request for all documents indicating or referencing resources expended by Plaintiff to identify and counteract the Defendants' alleged discriminatory conduct. (Dep. of R. Christian, p. 119: 13-25, 120:1-2, Ex. #3). This document states that Christian spent 100 hours at a rate of \$18.48 per hour, and Marguerite Vey-Miller spent 167 hours at a rate of \$25.60 per hour working on the Leslie Lane case. (Dep. of R. Christian, p. 119: 13-25, 120:1-2, Ex. #3, p. 2). According to the document, this resulted in a total diversion of resources for staff time in the amount of \$3,563.20. (Dep. of R. Christian, p. 119: 13-25, 120:1-2, Ex. #3, p. 2). The document also states that testing and investigative expenses resulted in a diversion of resources in the amount of \$1,299.00. (Dep. of R. Christian, p. 119: 13-25, 120:1-2, Ex. #3, p. 3). However, there is no statement or specific facts in this document that demonstrate which portion of these organizational damages are traceable to any alleged discriminatory conduct of Terry Hinn. Plaintiff has also produced Christian's "Case Detail Report" for Leslie Lane, which describes the billable time that Christian spent on Leslie Lane's case. (Dep. of R. Christian, p. 69-73, Ex. #2). Once again, this document does not reference Terry Hinn or any alleged discriminatory conduct of Terry Hinn. Consequently, Plaintiff has not established that it suffered distinct and palpable injuries that are fairly traceable to any of Terry Hinn's actions.

Because Plaintiff has invoked federal jurisdiction in this case, Plaintiff bears the burden at the summary judgment of demonstrating specific facts which establish distinct and palpable injuries fairly traceable to Terry Hinn's conduct. Like the *Acorn* case, plaintiff has not presented any facts to quantify the resources that were expended to counteract the effects of a single, alleged discriminatory act of Terry Hinn. Moreover, Plaintiff has not identified a specific discriminatory act of Terry Hinn. Plaintiff has not demonstrated which resources were used in identifying Terry Hinn in particular as an alleged violator of the FHA or NFHA, in monitoring or investigating Terry Hinn once identified, in determining the discriminatory effects specifically attributable to Terry Hinn's conduct, or in counteracting such discriminatory effects. Thus, the uncontroverted evidence establishes that the Plaintiff has not satisfied the injury in fact requirement for organizational standing under the FHA and that this Court does not have subject matter jurisdiction over Terry Hinn. Therefore, there is no genuine issue of material fact as to whether Plaintiff has organizational standing, or whether the court has subject matter jurisdiction. Accordingly, Terry Hinn is entitled to summary judgment as a matter of law.

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**CONCLUSION**

Based upon the foregoing, Defendant Terry Hinn respectfully requests that this Court grant his motion for summary judgment.

**TERRY HINN**, Defendant

BY: Baylor, Evnen, Curtiss, Gruit & Witt, LLP  
1248 "O" Street, Suite 600  
Lincoln, NE 68508-1499  
402 / 475-1075

BY:           /s/ Jarrod S. Boitnott            
Jarrod S. Boitnott, # 20662  
Mark W. Buckwalter #23630

**CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2008, I electronically filed the foregoing **Brief of Defendant Terry Hinn in support of Summary Judgment** with the Clerk of the Court using the CM/ECF system which sent notifications of such filing to the following:

Steven M. Virgil  
Attorney at Law  
Milton R. Abrahams Legal Clinic  
2120 Cass Street  
Omaha, NE 68178

Michael J. Rumbaugh  
Assistant Attorney General  
Office of the Attorney General  
2115 State Capitol  
Lincoln, NE 68508-8920

Andrew D. Strotman  
Cline, Williams, Wright, Johnson & Oldfather, LLP  
U.S. Bank Building, Suite 1900  
233 South 13th Street, Suite 1900  
Lincoln, NE 68508

**TERRY HINN**, Defendant

BY: Baylor, Evnen, Curtiss, Gruit & Witt, LLP  
1248 "O" Street, Suite 600  
Lincoln, NE 68508-1499  
402 / 475-1075

BY: \s\ Jarrod S. Boitnott  
Jarrod S. Boitnott, # 20662  
Mark W. Buckwalter #23630