

South Middlesex Opportunity Council, Inc. et al v. Town of Framingham et al

On October 24, 2007, South Middlesex Opportunity Council, Inc. and its affiliate South Middlesex Non-Profit Housing Corporation (together, "SMOC"), filed a federal lawsuit asserting on behalf of the disabled, among other claims, violations of federal civil rights law, the Fair Housing Act, the Americans with Disabilities Act, and the Federal Rehabilitation Act. The named defendants are the Town of Framingham, three members of its Board of Selectmen, three members of its Planning Board, four Town Meeting Members, and various other Town officials as well as two Town residents. The case is pending in the United States District Court for the District of Massachusetts in an action styled as South Middlesex Opportunity Council, Inc. et al. v. Town of Framingham et al, Civil Action No. 2007-12018 (Woodlock, J. presiding). The following is a brief overview of SMOC's Verified Complaint and Jury Demand ("Complaint") that initiated the lawsuit.

Overview of Conduct Alleged In Complaint

By way of brief summary, the Complaint alleges that beginning in or around 2005, defendants, the Town and individuals, most of whom are Town officials, joined together in a campaign to limit the number of recovering alcoholics or drug addicts whom they deem "undesirable" in Framingham and to discourage the disabled from remaining or locating in Framingham by limiting the number of social service programs in the Town. Defendants took aim, in particular, at SMOC, a nonprofit educational and social service provider, when it proposed in 2005 to relocate its Sage House Program, a residential treatment program for recovering substance abusers and their families with a sixteen-year successful track record, from one Framingham address to another. Neighbors to the proposed new site were up in arms that "drug addicts" would be moving into their neighborhood. A vocal minority of neighbors as well as elected and appointed Town officials, joined together with other members of Town government to make sure that this did not happen. The effort was, in fact, led by the Town and certain of its elected and appointed Town officials who acted both in and outside of their official capacities and who have each become so caught up in their own personal biases and furthering their own private interests, and so influenced by pressures from their neighbors and constituents, that they have abandoned their duty to follow the law.

The Complaint alleges that over the course of the next two years, the defendants worked together to interfere with and to try to prevent SMOC from siting the Sage House Program at 517 Winter Street. Plaintiffs allege that Defendants' efforts included, without limitation, (i) the malicious publication of false and defamatory statements about SMOC and its disabled clients and even threats against SMOC employees and property made in an effort to intimidate SMOC and its employees; (ii) misuse and manipulation of the Town's limited zoning oversight; (iii) anonymously leaking a confidential report made under G.L. c. 119, §51A; (iv) abuse by Town officials of their official status to, for example, unlawfully gain entry to SMOC facilities and to "stop and question" homeless people on their way in and out of SMOC's Common Ground Shelter and later its Turning Point Shelter; (v) the wrongful denial of permits to allow SMOC to site Larry's Place, a

residence for homeless disabled veterans.

Recently, the Town established a payment in lieu of taxes (“PILOT”) program aimed expressly at seeking “voluntary” payments from nonprofit social services agencies, which are legally exempt from making such payments, with the implicit message to SMOC that if it wants cooperation from the Town so that it may fulfill its mission to serve the disabled, it must pay despite the law and its legal status.

For a full recitation of the facts and the many documents already collected that support the facts alleged, including Town Counsel’s own memoranda to the Board of Selectmen, the Planning Board and other Town officials regarding the conduct at issue in the lawsuit, please refer to the Complaint and its exhibits.

Claims

SMOC asserts the following claims in the lawsuit:

Federal Statutory Claims. The Complaint asserts claims on behalf of SMOC against the Town for violations of various federal statutes: (i) the Fair Housing Act, 42 U.S.C. §§3601 et seq. (“FHA”); (ii) the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§12101 et seq.; (iii) the Federal Rehabilitation Act of 1973, 29 U.S.C. §§794 et seq. (“Rehabilitation Act”). The FHA claim is also alleged against all individual defendants. The Complaint also alleges a claim on behalf of SMOC against the individual Town official defendants for violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §1983.

State Statutory Claims. The Complaint asserts a claim on behalf of SMOC against all of the individual defendants under the Massachusetts Civil Rights Act, G.L. c. 12, §§11H-I (“MCRA”).

Other State Law Claims. In addition to federal and state statutory claims, the Complaint asserts claims under state law for Conspiracy and Defamation. The conspiracy claim is asserted against all of the individual defendants. Defamation is alleged against those individuals who made identifiable, false and defamatory statements of fact of and concerning SMOC.

Relief Sought

SMOC seeks the following relief on its claims, without limitation to other just and proper relief:

- o A permanent injunction ordering the Town of Framingham to comply with the Fair Housing Act, 42 U.S.C. §3601 et seq., the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq., the Federal Rehabilitation Act of 1973, 29 U.S.C. §§794 et seq., the Dover Amendment, G.L. c. 40A, §3, and all other applicable federal and state laws

- That the Court take supervisory jurisdiction over the Town of Framingham's actions to ensure compliance with the Fair Housing Act, 42 U.S.C. §3601 et seq., the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq., the Federal Rehabilitation Act of 1973, 29 U.S.C. §§794 et seq., the Dover Amendment, G.L. c. 40A, §3, and all other applicable federal and state laws
- A permanent injunction ordering the Town of Framingham to issue within three (3) business days of the order a permanent occupancy permit to SMNPHC for 517 Winter Street and to refrain from impeding, delaying or interfering with the siting or operation of the Sage House Program at 517 Winter Street
- A permanent injunction ordering the Town of Framingham to issue within ten (10) business days of the order all building permits, special permits and/or other licenses or authorizations necessary to allow SMOC and SMNPHC to site and operate Larry's Place at 90 Lincoln Street, and to refrain from impeding, delaying or interfering with the siting or operation of Larry's Place at 90 Lincoln Street
- Damages in the amount assessed by a jury against each Defendant, jointly and severally
- Attorneys' fees and costs (including expert fees)
- Punitive and exemplary damages