

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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VIA FIRST CLASS MAIL

December 3, 2007

Daniel Bader
306 Coronado Street
Newport Beach, CA 92661

Re: DFEH v. Bader,
Case No. H-200607-P-0239-00-h.

Dear Mr. Bader:

Thank you for your letters on November 27, 2007 to me and your letters on November 26, 27 and 30, 2007 to Wanda Kirby. As I stated previously, this case is being handled by the Legal Division of the Department of Fair Employment and Housing, accordingly, please direct all correspondence related to this case to my attention. Your correspondence sent to other Department offices or personnel will simply take time for them to be forwarded to me.

You have asked the Department why you have not been provided a copy with the case file. The Department's policy, in compliance with guidelines under the California Public Records Act and Information Practices Act, is not to provide the investigative file during the investigation. For this reason, your request to see the case file was properly refused during the investigation and conciliation.

With respect to your public records act request on or about November 27, under Government Code section 6254, subdivision (b), records to which a public agency is a party in litigation are exempt from disclosure to a public records act request. On November 30, 2007, the Department filed a lawsuit in this case in the Superior Court of Orange County. For this reason, the Department cannot respond to your Public Records Act request.

As I previously stated over the phone, the Department's policy in pending litigation is to provide documents related to its investigation only when served with a subpoena or request for documents made under applicable Code of Civil Procedure or Code of Regulations section (in the case of administrative actions), and the Department is entitled to object and assert privileges. The Department is not applying its policy arbitrarily against you. The policy I have described applies in all instances, including with complainants such as the Fair Housing Council of Orange County. You are permitted to obtain the documents you request by use of a subpoena or request for documents, which may be issued after you answer the civil complaint.

You had previously asked the Department to exercise discretion in whether to file a civil lawsuit in this case. The Department's filing of the civil lawsuit is a result of your service

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of an election to transfer proceedings to court on the Department pursuant to Government Code section 12989. This section mandates that the Department shall within 30 days of a receipt of a notice of election to civil court, file a civil action with the proper civil superior court in its name or on behalf of the aggrieved person as a real party in interest. The Department has correctly followed its procedure throughout the investigation and conciliation process, all of which are defined by statute.

With respect to your letter to Ms. Kirby on November 30, 2007 asking for proof of the objective standard of Government Code section 12955, subdivision (c), I have previously given you statutory citations for our position that your advertisements violate the FEHA. The case law on the federal counterpart, 42 U.S.C., section 3604, subdivision (c), as to intent of the maker of a statement, is well settled. It should be noted that the Department has not conceded that you lacked intent, only that your purported intent was not a defense. It should be also noted that the Department has never stated your statements only "sort of" imply a preference or limitation against families with children. This statement was written by Dana Parsons, attributed to Joel Ibanez, and as I have already pointed out, is hearsay that is inadmissible in court, and not subject to a hearsay exception

At various times in your dealings with the Department, you have stated that you have consulted with attorneys, were yourself an attorney, and have retained an attorney. The Department is not obliged to and cannot provide you with legal advice on the FEHA. You should consult with an attorney if you seek legal advice or need assistance with your defense.

Sincerely,



Ralph Tsong
Staff Counsel

RT