

The statute before the Supreme Judicial Court in Brown in paragraph 10 prohibited landlords from discriminating against recipients of public assistance or housing subsidies "solely because such an individual is such a recipient." It was undisputed that the defendant, Brown, refused to process rental applications from Section 8 certificate holders. The Attorney General had sought and secured summary judgment in the court below.

The landlord appealed claiming that his refusal to rent to Section 8 recipients was due to certain administrative and regulatory requirements of the program. He claimed that these were legitimate business reasons and that his refusal to rent to Section 8 certificate holders was not "solely" because they were recipients of housing assistance. Accordingly, he argued summary judgment was inappropriate since there were disputed issues of fact.

The Supreme Judicial Court held that Brown's reasons for refusing to rent to Section 8 certificate holders without more did not constitute discrimination for purposes of summary judgment. The Court reasoned, "That these reasons are related to the requirements of the Section 8 program does not equate with discrimination 'solely' on the basis of the individual's status as a Section 8 certificate holder." ~ at 834. Brown was entitled to ". . .an opportunity to litigate the issue whether his reasons are legitimate business reasons. . ." Id.

Subsequent to the Brown decision the Legislature amended Paragraph 10. Chapter 722 of the Acts of 1989, Section 19A, subsection 10 substituted "because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program" for "solely because the individual is such a

recipient." The question for the Full Commission to decide on certification is whether this amendment by the Legislature overruled the Supreme Judicial Court's interpretation of Paragraph 10 as set out in its decision in Brown.

We answer the question in the affirmative and hold that the statutory amendment of 1989 to Paragraph 10 constituted a legislative response to the Brown decision and evidences a clear intent to reverse the holding of that case. The Supreme Judicial Court has itself said that in matters of statutory construction, " As a general proposition, (t)he Legislature must be assumed to know the preexisting law and the decisions of this Court." Carr v. Howard, 689 N.E. 2d 1304, 1310 (Mass 1998).

The clear language and plain meaning of the amendment to Paragraph 10 shows that it now prohibits discrimination against an individual who is a recipient of housing assistance or because of the requirements of any such public housing assistance. The Legislature deleted the word "solely" and specifically inserted discrimination because of the "requirements" of any program of public housing assistance. These word changes track the very language of the Brown decision with an obvious intent to reverse the effect of that decision. The closeness in time between the issuance of the decision in Brown and the amendment to paragraph 10 is additional evidence indicating a clear intent to address the interpretation in Brown. In words particularly apt to the issue before this Full Commission, the Supreme Judicial Court in the case of Condon v. Haitsma, 90 N.E.2d. 549, 550 (Mass 1950) stated:

There is no ambiguity in the language of (the statute), and where the language of a statute is plain there is no room for speculation as to its meaning or its implication. The Legislature must be presumed to have meant what the words plainly say, and it also must be presumed the Legislature knew pre-existing law and the decisions of the court.

In accordance with this Order, the Commission will interpret M.G.L. c. 151B, Section 4, Paragraph 10 as set forth above in future cases in which such paragraph is at issue. This matter is remanded to the Investigating Commissioner for further proceedings consistent with this ruling.

SO ORDERED this 13th day of March, 2002.

Dorca I. Gomez
Chairwoman

Cynthia A. Tucker
Commissioner

Walter J. Sullivan, Jr.
Commissioner