



## APPEALS COURT HOLDS LANDLORD LIABLE FOR HOUSING DISCRIMINATION

Boston, MA — On July 8, 2011, the Appeals Court issued a ruling affirming an MCAD decision which found that a landlord had refused to rent an apartment to a prospective tenant based on familial status and lead paint. The MCAD hearing officer's (Judith Kaplan) decision awarded the prospective tenant \$10,000 in emotional distress damages.

The Appeals Court accepted two important policy arguments advanced by the Commission: (1) that an apartment is "available" for purposes of coverage under the state Fair Housing law even where existing tenants are still occupying the apartment; and (2) that an advertisement for a particular apartment that brings potential tenants from whom applications are solicited for other units is a "public offering" of the apartment for purposes of coverage under the statute.

As to the apartment's "availability," the Appeals Court deferred to the Commission's specialized knowledge in its determination of what constituted "available" housing, recognizing a "reality of the housing market: that units are often shown to prospective tenants well before a current tenant's occupancy has ended...." Further, the Court determined that the Commission's view of the "public offering" requirement is "reasonable and not in conflict with the governing legislation." The Appeals Court's holding affirms the broad reach of the state's Fair Housing Law, and ensures that landlords cannot evade the intent and purpose of the statute simply by claiming technicalities as to the availability of housing or the means by which it is offered.

The case was prosecuted at public hearing by former Commission Counsel Matthew Buehler. Commission Counsel Caitlin Sheehan argued the matter for the Commission before the Appeals Court.