BEFORE THE MONTGOMERY COUNTY COMMISSION ON HUMAN RIGHTS

Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6660

ROBERT GREENFIELD,	*	
	*	
Complainant,	*	
	*	
v.	*	OZAH No. HR-17-01
	*	(OHR No. REH-04487)
CASTLE GATE TOWNHOUSE ASS'N, INC.,	*	
	*	
and	*	
	*	
ABARIS REALTY, INC.	*	
	*	
Respondents.	*	
	*	

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ORDER ON CROSS-MOTIONS TO DISMISS OR REMAND AND TO AMEND COMPLAINT

In May 2008 Robert Greenfield filed an administrative complaint under the County's Human Rights Law against the Castle Gate Townhouse Association, a condominium association.[1] One version of the complaint directs that it should be served on Abaris Realty, the association's property manager; another version names Abaris as a second respondent. Docket no. 1(a).

Although there was sporadic activity on the case, it effectively languished in administrative limbo for over eight years until October 2016, when the Office of Human Rights ("OHR") certified it to the Commission on Human Rights ("Commission") for public hearing. After a revised certification in December 2016, the Commission referred the case to the Office of Zoning and Administrative Hearings ("OZAH") the same month.

[1] The 2008 complaint names "Castlegate Condominium HOA" as the respondent and the Office of Human Rights certified the case under that name. According to respondents' motion to dismiss, that name was a misnomer. Dr. Greenfield does not dispute that assertion. As a result, the caption in this Order has been revised to list Castle Gate's formal name, subject to revision based on further developments in this case.

The parties filed cross-motions, with the respondents moving to dismiss or remand and Dr. Greenfield moving to amend the complaint to allege more recent discriminatory and retaliatory conduct.[2]

I grant the motion to dismiss Abaris Realty to the extent that Abaris will no longer be treated as a respondent in further proceedings before me. I deny the motion to dismiss Castle Gate and conclude no useful purpose will be served by remanding this almost ten-year-old case to OHR unless the parties agree to mediation. I deny the Greenfield motion to amend the complaint as superfluous.

I. BACKGROUND.

a. *The 2008 complaint.*

There are two versions of the complaint, both dated May 5, 2008, both presumably signed by Dr. Greenfield. (The signatures on both are unreadable). Both are typed on a Montgomery County form titled "Complaint of Alleged discrimination in Housing/Real Estate." In a box titled "date of harm" both are marked "June 1, 2007 (continuing)." Both list "National Origin, Ancestry" as the "basis of alleged discrimination."

The two versions differ in only one respect. In a version attached to the Greenfield motion to amend the complaint, "Castlegate Condominium HOA" is listed as Respondent (1); in the adjacent column is the entry "Serve: Abaris Realty, Property Manager." Docket entry 17(a), ex. A. In the second version, the word "serve" has been replaced by "Respondent (2)". In both versions, the "Castlegate" address is listed as 13831 Castle Boulevard, Silver Spring, MD 20904."

The body of the complaint alleges:

> [M]y family has been discriminated against, subjected to different terms and conditions of occupancy and our residency in the Respondent's complex constructively terminated by Respondent due to my wife's and son's national origin (non-American) and their ancestry (Latino).

The complaint twice lists the Greenfield residence address in the complex as 3569 Stepping Stone Lane but gives no town or ZIP code.

The complaint focuses on an interaction Dr. Greenfield had on June 1, 2007, with the association's president at the time, a Mr. Kramer. Dr. Greenfield did not know Mr. Kramer's first name. According to the complaint, shortly before a homeowners meeting Mr. Kramer

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[2] Some papers filed on his behalf refer to the Complainant as *Dr.* Greenfield. This Order adopts that title.

accused Dr. Greenfield of "harbor[ing] aliens." *Id.* During the meeting itself, Mr. Kramer allegedly simulated masturbation and called Dr. Greenfield's wife a "*puta,*" Spanish for "whore." *Id.* Dr. Greenfield's wife and son were born outside the United States. *Id.*

Mr. Kramer's words before the meeting were allegedly heard by Castle Gate's vice president and his actions at the meeting witnessed by Abaris's representative, a woman Dr. Greenfield only knew as "Diane." At the meeting, she told Mr. Kramer to stop simulating masturbation. *Id.*

Dr. Greenfield alleged "[h]ostile actions of this sort repeated themselves after the meeting." *Id.* ¶ 4. The complaint states that the Greenfield family moved out of the condominium complex in September 2007 because of such "subsequent actions," although it continued to own at least one unit in the complex. Dr. Greenfield alleges the family was the victim of unlawful discrimination and "constructively terminated" because of the wife's and son's national origins. *Id.*

The 2008 complaint does not describe "hostile actions" between the June 1 meeting and May 5, 2008, the day complaint was filed with OHR. Apart from the reference to "Diane's" objections to Mr. Kramer's conduct, the body of the complaint does not refer to Abaris, much less allege unlawful conduct by it.

b. *Respondents' motion to dismiss or remand.*

Respondents' motion argues that the 2008 complaint fails to state claims against either Castle Gate or Abaris under the Human Rights Law and should be dismissed for lack of prosecution. In the alternative, it asserts the case should be remanded to OHR because the Office had not conducted a "full investigation." Docket no. 18 at 1.

The motion relies in part on language in the Human Rights Act that complaints under the Act "must state (1) the particulars of the alleged violation * * *." M.C. Code, § 27-7(a)(1). Other than the allegations about Mr. Kramer's conduct in June 2007, the respondents argue that the complaint's passing reference to subsequent "hostile actions of this sort" does not meet the "particulars" standard of the Act. While the Human Rights Act prohibits "housing practices * * * where those practices are discriminatory in nature," Mr. Kramer's "name-calling" and "obscene gestures during a disagreement" do not rise to that level. *Id.* at 3, citing M.C. Code § 27-12.

The motion contends that the complaint against Abaris Realty should be dismissed because it mentions no conduct by Abaris that could constitute a violation of the Act. *Id.* at 4.

As an alternative ground, the motion claims that complaint should be dismissed because of a failure to prosecute for at least four years. *Id.* at 5, citing Md. Rule 2-507(c) and *Spencer v. Estate of Newton*, 227 Md. App. 154, 159-160 (2016). In particular, dismissal for lack of prosecution is appropriate, "[b]ecause Mr. Greenfield did not take steps to ensure proper service of process." *Id.* at 6. The motion attaches an October 12, 2012, letter in which an organization, The Donaldson Group, informs OHR it had wrongly been served by an OHR investigator using the Castle Boulevard address in the complaint:

> Unfortunately, that address is incorrect, as it is the address of an apartment community by the name of Ashford at Woodlake that is managed by The Donaldson Group.
>
> The legal name of the apartment complex is AF-FCP Castlegate Borrower LLC. Herein lies the error of The Donaldson Group and Ashford at Woodlake receiving the complaint. In no way is the property or ownership involved or related to Castlegate Condominium HOA.

Id., ex. D.

After OHR, several months later, called Dr. Greenfield's attention to the address error and to the Donaldson letter, he responded on February 2, 2013: "The address is 3769 Stepping Stone Lane Burtonsville Maryland 20866. I have no idea what the Donaldson group is talking about." *Id.*, ex. E.

Aside from the failure to provide the correct address, the motion argues, the case was allowed to lay dormant because Dr. Greenfield did nothing to get OHR to act. Respondents heard nothing of the case in the more than three years between May 20, 2009, and September 21, 2012, when OHR wrote to ask whether they wished to engage in mediation or to fill out a "Request for Information." *Id.* ex. G. A November 1, 2012, letter from respondents' counsel expressed surprise that OHR considered the case still open because "as we [counsel and OHR investigator] discussed, the Association believes this matter was resolved some time ago through discussions with your office shortly after the complaint was filed." *Id.* ex. H. The letter asserted that the condominium association's records "with respect to the close out of the matter" could no longer be found. *Id.* In any event, Castle Gate still denied the allegations in the complaint. *Id.* Respondents heard nothing until OHR issued its Determination the following year. *Id.* citing ex. I.[3]

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[3] Exhibit I consists of the OHR Determination and a November 19, 2013, letter from respondents' counsel stating, among other things: "We were dismayed to receive your Notice of Determination, this matter having been without action, response, and/or any indication that it was still under consideration by your office for over a year." *Id.*

Failure to prosecute would result in prejudice if the complaint were now to be litigated, the motion argues. Respondents would "have to defend against allegations regarding actions that allegedly transpired at a board meeting held approximately ten years ago, by, among other things, searching for records from 2007, hunting for witnesses that may have relocated, and interviewing witnesses whose memories of a 2007 board meeting surely have faded." *Id.* at 8.

The motion attached the November 2013 OHR Determination which concluded: "With no denial or response from respondents . . . after being asked on June 5, 2008, October 2, 2008, May 20, 2009, and September 21, 2012, OHR concludes that Complainant's allegations are true. . . ." *Id.* ex. I at 4.

The 2013 Determination did not end the matter. Shortly before its issuance, counsel for respondents wrote OHR on November 2, 2013, that the association was perplexed because "the Association believes this matter was resolved some time ago through discussions with your office *shortly after the complaint was filed*." *Id.*, ex. H; italics added. In a subsequent letter, on November 19, 2013, counsel expressed dismay that the Determination had been issued despite his earlier letter and without reference to it.

c. *Complainant's response to motion to dismiss.*

The Greenfield response argues that the original complaint met the Human Rights Law's pleading standards by alleging that the Greenfield family had been subject to different terms and conditions of occupancy because of their national origin. Docket no. 19, at 2-4, citing M.C. Code § 27-12 rather than § 27-7. It argues that the complaint, drafted by a *pro se* litigant, should be liberally construed. *Id.* at 4, citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

In any event, the response argues, Dr. Greenfield continued to supplement the complaint by providing OHR with information of additional discriminatory conduct. *Id.* at 3, 8, In an accompanying affidavit, Dr. Greenfield states he "regularly" provided OHR with additional information "which evidence the unfair treatment" he had been subject to over time. *Id.*, ex. B, ¶¶ 17-18. Two examples of such supplementation are attached to the response. *Id.*, ex. D (letters sent in 2009 and 2015).

The response argues that Dr. Greenfield diligently pursued his claims but that OHR had delayed its investigation. The affidavit states that the OHR investigator with whom Dr. Greenfield had been corresponding in 2009 had left OHR's employment. *Id.*, ex. B. The investigator had explained to him that OHR's budget had been cut and the agency short-

staffed. *Id.* at 2. Thereafter, until 2012, Dr. Greenfield had "routinely" called OHR to find out the status of the case and was told it was still under investigation. *Id.* In 2012, new investigators had been assigned to the case. *Id.*

The Greenfield affidavit also asserts he had informed OHR of Castle Gate's address and other information about the existence of Castle Gate. Neither of the attachments to the affidavit, however, displays Castle Gate's address. See *id.*, ex. C, D. One, a March 2009 letter from Dr. Greenfield to an OHR investigator, states he was forwarding material about Castle Gate but that material was not included in the response filed on his behalf.

The response does include a February 2017 printout from the Maryland Business Express web site listing Castle Gate Townhouse Association, Inc. *Id.*, ex. F. The printout lists Castle Gate's registered address as "Abaris Realty, Inc, 12009 Nebel Street," in Rockville. The printout lists "Shireen Ambush, Abaris Realty, Inc.," as Castle Gate's registered agent. *Id.* It states Castle Gate was formed in 1983 and that its status had subsequently been "revised." *Id.*[4]

d. *Complainant's motion to amend the complaint.*

Dr. Greenfield moved to amend the complaint following the Commission's referral of the case for hearing. Docket no. 17(a).

The amended complaint essentially repeats the allegations of the original complaint but adds events occurring after June 1, 2007, all but one of which allegedly took place after filing of the original complaint in 2008. Docket no. 17(b). The proposed amendment alleges that Castle Gate and Abaris in November 2007 threatened to tow away a vehicle parked at the Greenfield residence because of expired tags. The remainder of the new allegations refers to incidents in 2008, 2009, 2011, 2014, 2015. *Id.,* ¶¶ 16, 17 b-*l.* The Greenfields were ordered to mow their lawn in the middle of winter, to paint a storm door, to clean a flower bed, to move debris from a rear deck; at an unspecified date their reserved parking spaces were confiscated.

According to the amended complaint other residents had similar violations of association rules but were not required to remedy them, even when Dr. Greenfield called Castle Gate's and Abaris's attention to them. *Id.*, ¶¶18-21. The amended complaint alleges that the difference in treatment was attributable to his family's national origin. *Id.* 22. As a

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[4] My April 17 search of the site from which the printout was derived, https://egov.maryland.gov/BusinessExpress/EntitySearch/BusinessInformation/D01646595, found the information to be current.

result of the disparate treatment, Dr. Greenfield had difficulty in finding tenants for the unit and some tenants moved out because of Castle Gate's and Abaris's actions. *Id.* ¶¶ 25-26.

Aside from these allegations of disparate treatment, the amended complaint for the first time implicates Abaris's involvement in the Kramer actions at the June 1, 2007, homeowners meeting: Dr. Greenfield "attempted to communicate with Abaris regarding Mr. Kramer's behavior which Abaris dismissed and refused to take any action." *Id.* ¶ 11.

II. PRECEDENT.

The Human Rights Law's complaint-filing requirement for initiating a discrimination case is identical for housing and employment discrimination claims but there is no judicial precedent directly discussing the relevant complaint procedures of the County Human Rights Law. When there is no direct precedent, the Montgomery County Council has directed that the law is to be interpreted consistently with similar state and federal laws. See M.C. Code § 27-7(i)(4): "The [Commission's case review] board must apply relevant federal, State, County, and case law to the facts." The Maryland Court of Appeals therefore relied on federal housing case law in determining whether specific intent is required to establish a violation of the County law. See *Montgomery County v. Glenmont Hills Associates*, 402 Md. 250, 278-279, 936 A.2d 325 (2007).

The requirement for initiating discrimination cases is particularly well developed in federal case law, especially for employment discrimination claims. In general, the relevant case law contains some tension in what must be included in an administrative complaint filed by a lay person. On the one hand, a layperson is not expected to know the nuances of pleading and the wording of their complaints will not be judged by rigorous standards. At the same time, the complaint must reasonably give notice to a respondent as to what it is accused of and to the administrative agency about what it is to investigate.

In *Killian v. Kinzer*, 123 Md. App. 60, 716 A.2d 1071 (1998), a Title VII employment discrimination case, the Maryland court held that an administrative complaint ("charge") filed with the Equal Employment Opportunity Commission ("EEOC") under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, need not be as specific as a court complaint because the system is intended to allow an "average person" to initiate the process. *Id.*, 123 Md. App. at 67, citing *Love v. Pullman Co.*, 404 U.S. 522, 527 (1972).

An administrative complaint's wording *is* significant in that subsequent legal resolution can encompass only claims "'like or related to allegations contained in the charge, and growing out of such allegations.'" *Killian*, 123 Md. App. at 66, quoting *Nealon v. Stone*,

958 F.2d 584, 590 (4th Cir. 1992) (other citations omitted). Going beyond a reasonable interpretation of the language of the original administrative complaint "'would circumvent the EEOC's investigatory and conciliatory role, as well as deprive the charged party of notice of the charges. . . .'" *Id.*, quoting *Nicol v. Imagematix, Inc.*, 567 F. Supp. 744, 752 (E.D. Va. 1991) (other citations omitted; ellipses mine).

The *Killian* court therefore concluded that the complainant there could sue only for retaliation, but not for workplace harassment, because she failed to describe harassment in her charge or to mark the appropriate box on the charge form. The claims of retaliation and harassment were not sufficiently interrelated to give the respondents adequate notice. To allow the harassment claim to proceed "would frustrate the goals of the EEOC administrative process, that is, notice to an employer of the charge and an opportunity to resolve the dispute outside a courtroom." *Id.* at 67.

In a case brought under the Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*, the Fourth Circuit wrote that the purposes of an administrative complaint are to ensure the respondent "'is put on notice of the alleged violations'" and to permit administrative investigation and conciliation by agencies such as the EEOC "'as the primary means of handling claims, thereby encouraging quicker, less formal, and less expensive resolution of disputes.'" *Sydnor v. Fairfax County*, 681 F3d 591, 593 (4th Cir. 2012), quoting *Miles v. Dell, Inc.*, 429 F.3d 480, 491 (4th Cir. 2005), and *Chris v. Tenet*, 221 F3d 648, 653 (4th Cir. 2000). Both goals would be undermined if the complainant could introduce claims at subsequent stages of the proceedings, by referring to "'different time frames, actors, and discriminatory conduct.'" *Id.*, quoting *Chacko v. Patuxent Institute*, 429 F.3d 505, 506 (4th Cir. 2005).

The *Sydnor* court cautioned, however, that the complaint "should not become a tripwire for hapless plaintiffs" by requiring "untrained parties to provide a detailed essay." 681 F.3d at 594. Administrative complaints should therefore be construed "'to the extent consistent with permissible rules of interpretation, to protect the [complainant's] rights and statutory remedies.'" *Id.*, quoting *Federal Express Corp. v. Holowecki*, 552 U.S. 398, 406 (2008); my brackets. See, similarly, *Barnes v. ISG Sparrows Point, LLC*, 2011 WL 4596058 (D. Md. 2011).

Complaints filed in the judicial system in Maryland, rather than with an administrative body, need only be "simple, concise, and direct." Md. Rule 2-303(b). Such complaints "shall be so construed as to do substantial justice." Md. Rule 2-303(e). As the Court of Appeals has noted, "[t]he primary purpose behind our pleading standards is notice

and there need only be substantial agreement between what is pleaded and what is proved." *Tshiani v. Tshiani*, 436 Md. 255, 81 A.3d 414 (2013); citations omitted.

III. *HOLDINGS*.

a. *Motion to dismiss Abaris Realty.* Abaris is dismissed as a respondent in the case before me subject to review by the Commission's Case Review Board upon the issuance of my final report and recommendation in this case. I find that there is no genuine issue of material fact to be decided at the hearing as to whether Abaris is a proper party and it is therefore entitled to prevail as a matter of law. See the County's Administrative Procedure Act, M.C. Code 2A-7d.[5] The matter is so clear that no oral argument is warranted.

Under persuasive case law the contents of the Greenfield complaint are wholly inadequate to give the Commission jurisdiction over Abaris. In one version of the complaint, Dr. Greenfield himself does not even name Abaris as a respondent. Assuming the second version is a later iteration intended to correct the other version, simply inserting "Respondent" in place of "Serve" in the heading is insufficient to create jurisdiction under the Human Rights Law.

Nowhere in the body of the complaint is there an allegation that Abaris discriminated against Dr. Greenfield in violation of the Human Rights Law. The only explicit reference to Abaris is that its representative at the homeowner's meeting observed Mr. Kramer's behavior and chastised him for it. The body of the complaint refers repeatedly to a single respondent. And, although the complaint refers to "subsequent actions" none are ascribed to Abaris.

The OHR Determination cannot cure these fatal omissions. After initially waffling about whether Abaris was a legitimate respondent, OHR ultimately concluded "[a]fter a thorough review," that Abaris "was indeed a Respondent." Docket no. 1(b) at 4. The Determination itself does not explain how OHR came to that conclusion or describe facts that would support it. Earlier, OHR explained that Abaris needed to be considered a respondent,

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[5] Section 7(d) provides (italics added):

> Any party may file a motion for summary decision at least 30 days before the date of a hearing.
>
> The hearing authority may grant summary decision if the hearing authority finds that:
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> (1) there is no genuine issue of material fact to be decided at the hearing; and
>
> (2) the moving party is entitled to prevail as a matter of law.
>
> The hearing authority must give all other parties at least 10 days to respond to the motion for summary decision before deciding the motion. The hearing authority may permit oral argument on the motion.

"in order to assure that a full investigation of this matter is conducted." Docket no. 18, ex. C. The need for relevant evidence, however, cannot convert a third party into a respondent absent some forewarning in the complaint. The Determination's ultimate conclusion, that Abaris had violated the Human Rights Law because it had not responded to OHR's requests for information and that therefore Dr. Greenfield's allegations needed to be deemed true, omits a crucial element, namely, reference to an alleged unlawful action by Abaris in the complaint; the explanation for that is that none exists.

In short, based on the precedent cited above, absent even a minimal description in the complaint of discriminatory conduct by Abaris, neither it nor OHR can reasonably be deemed to have been on notice of a violation of the Act and jurisdiction necessarily fails. [6]

Even though Abaris will no longer be considered a respondent during this phase of proceedings, it is hoped that it will cooperate fully in providing Dr. Greenfield's counsel with information about Castle Gate requests and orders related to the Greenfield property. Given Abaris's close ties with Castle Gate (including its joint use of Castle Gate's counsel), Dr. Greenfield's requests for subpoenas to obtain *relevant* information will be liberally granted should Abaris decline to cooperate.

b. *Motion to dismiss Castle Gate*. By contrast, the allegations in the complaint against Castle Gate describe behavior that could violate the Law and confer jurisdiction on the Commission. The case against Castle Gate will be allowed to proceed to discovery.

If the allegations are believed, Mr. Kramer's actions at the homeowners meeting demonstrated a strong antipathy to Dr. Greenfield's family because of their ancestry and national origin. Those actions alone may be insufficient to create a violation of the Law. A single episode of name-calling is normally insufficient to constitute a violation. See *Fax v. CPC, Inc.*, HRC No. E-02618 (2004) (reversing hearing examiner finding of unlawful sexual harassment in employment based on a single episode).

The Greenfield complaint, while focused on the June 1, 2007, incidents, however, also alleges that "[h]ostile actions of this sort repeated themselves after the meeting" and were sufficiently severe to cause Dr. Greenfield and his family to move out of the Castle Gate

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[6] To the extent that Dr. Greenfield's proposed amended complaint attempts to make Abaris a respondent, it is time-barred in this case. See M.C. Code §27-7(d) ("Any complaint must be filed with the director [of OHR] or the Commission within one year after the alleged discriminatory act or practice. If those acts or practices are continuing in nature, the complaint must be filed within one year after the most recent act or practice"). If Dr. Greenfield believes that Abaris has been violating the Human Rights Law, he must file a new complaint against it with OHR or the Commission.

complex three months later. The box on the complaint form for the date of harm also states that the harm was "continuing."

Coupled with the alleged animosity displayed at the homeowners meeting, these allegations of continuing hostility were sufficient to put both Castle Gate and OHR on notice that Castle Gate was being accused of a course of discriminatory conduct against members of the Greenfield family because of their national origin. As such, Dr. Greenfield meets the Human Rights Law standard that a complaint provide the "particulars" of alleged violations. There is no reason to believe that the County Council intended to impose standards on lay-initiated complaints more stringent than those required for Maryland court filings. Although not stated explicitly, the pleading standards in a remedial law such as the Human Rights law should be construed so as to do substantial justice.

Multiple episodes of harassment may constitute violations of the Law's proscription against "discrimination in the furnishing of services, or in the terms, conditions, privileges or tenure of occupancy of any person because of their ancestry or national origin." M.C. Code § 27-12(5). It is not required that each be listed in the complaint so long as the respondent has a general idea of what it is being accused of. As the *Sydnor* court wrote, lay complainants should not be denied justice because they failed to provide "a detailed essay."

Whether a series of discriminatory incidents amounts to a violation of the Law depends on the frequency and severity of the actions. In *Magee v. Dansources Technical Services, Inc.*, 137 Md. App. 527, 550, 769 A.2d. 231 (2001), an employment discrimination case alleging sexual harassment, the Court held that discriminatory conduct "must be so 'objectively' severe or pervasive that it has a substantial effect on the terms or conditions of the employment" sufficient to violate the Law. A fact-finder must determine from the totality of circumstances whether the Law has been violated but there is "no 'magic formula' for determining when sexual harassment is sufficiently severe to be actionable." *Id.,* 137 Md. App. at 561. See *Manikhi v. Mass Transit Administration*, 360 Md. 333, 348-349, 758 A.2d 95 (2000), indirectly quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23 (1993) ("In determining whether the alleged harassment of an employee is sufficiently severe or pervasive to bring it within Title VII's scope, a court must examine 'all the circumstances, [including] the frequency of the discriminatory conduct, its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance'"). Substantially similar considerations

should apply to determining whether alleged discriminatory actions in housing rise to the level of abuse outlawed by the Human Rights Law.

The proposed amended complaint cites only one additional hostile action between the homeowners meeting and the date the complaint was filed 11 months later. That suggests that there may not have been repeated "hostile actions" and Dr. Greenfield may have difficulty in establishing they occurred. Doubt about the ultimate outcome, though, is not enough at the pleading stage to justify dismissal. At this stage, before discovery, I'm unwilling to foreclose the possibility that Dr Greenfield can present facts demonstrating a course of discriminatory conduct by Castle Gate so objectively severe or pervasive as to be actionable.

Castle Gate's motion also urges dismissal of the complaint because it was not served on the homeowners association until several years after it was filed. That failure can largely be attributed to the flawed address in the headings of both versions of the complaint. Irrespective of who may have inserted that error, Dr. Greenfield ratified it by signing the complaint. As a result, OHR was plainly misled for several years, and sent its inquiries about the case to recipients who had nothing to do with Castle Gate. The mistaken address delayed OHR's processing and resolution. So, apparently, did OHR staff turnover which allowed the case to lie dormant for a year or more.

Despite the wrong address, Castle Gate was long aware of the complaint, years before the address was corrected. Castle Gate's counsel's 2012 letter to OHR confirms its awareness of the complaint based on "discussions with your office *shortly after the complaint was filed.*" Docket no. 18, ex. H; italics added. Similarly, respondents' reply in support of the motion to dismiss candidly acknowledges that "Castle Gate always had notice of the proceedings, Respondents have never claimed otherwise." Docket no. 30 at 3, n. 2.

More telling yet is that Castle Gate *did* receive timely notice of the complaint through service on Abaris Realty. The OHR Determination states that it notified Abaris of the complaint as early as June 8, 2008. See Docket no. 1(b) at 3. Abaris was presumably Castle Gate's agent for service then, as now. Neither the present record nor the Maryland government website for corporate registration (see n. 4, above at 6) contains information suggesting otherwise. If Abaris failed to transmit the complaint to the officers and board of the homeowners association in a timely fashion, that failure is not attributable to Dr. Greenfield or to OHR.

Actual knowledge of the complaint trumps both the address error and OHR's inability to interact with Castle Gate earlier. Once the complaint was filed, it was OHR's statutory duty to investigate and to resolve it. The faulty address thwarted its investigation but alone is insufficient to make Dr. Greenfield responsible for OHR's failure to determine whether its correspondence had reached Castle Gate directly or indirectly. *Cf. Edelman v. Lynchburg College*, 300 F3d 400, 404 (4th Cir. 2002) ("Once a valid charge has been filed, a simple failure by the EEOC to fulfill its statutory duties regarding the charge does not preclude a plaintiff's Title VII claim"). Because OHR, rather than a complainant, has the statutory duty to investigate and "prosecute" alleged violations of the Human Rights Law, *Spencer*'s holdings are inapt. There, the Court affirmed dismissal of a judicial complaint after the plaintiff's failure to pursue his claim for two years was "wholly attributable to appellant [a delay] that simply was inexcusable." *Id.*, 227 Md. App. at 161.

In short, because Castle Gate had timely actual notice of the complaint and presumptive notice through OHR's service on its registered agent, Abaris, Castle Gate's motion to dismiss for failure to prosecute is denied.

c. *Motion to remand.* This case had been pending for over eight years in OHR, and needs to be concluded sooner rather than later. A remand at this late stage would serve no useful purpose other than additional delay. Whether Castle Gate violated the Human Rights Law can be expeditiously resolved in the current proceedings and does not need additional OHR investigation.

That is not to foreclose possible OHR involvement in conciliating this dispute if both parties were to request a third-party mediator. As the Commission referral order notes, voluntary settlement of the case is encouraged. Unless the parties jointly request time for such conciliation, though, the case will continue in the current forum. The motion will therefore be denied.

d. *Motion to amend complaint.* In light of the holdings above, no useful purpose will be served by an amended complaint. The original complaint will either cover the proposed allegations of unlawful discrimination by Castle Gate or the allegations will be untimely, depending on how closely related they are shown to be to the 2008 complaint. *Cf. Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380-381 (1982) ("where a plaintiff, pursuant to the Fair Housing Act, challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it

is filed within [the limitations period, starting at] the last asserted occurrence of that practice").

Discovery will shed light on whether Castle Gate has been involved in a course of continuing discrimination against Dr. Greenfield such that any later incidents are like and related to the incidents arguably covered by the initial complaint. Because Abaris is no longer a respondent, Dr. Greenfield will need to show by a preponderance of the evidence that Castle Gate's officers or board orchestrated the conduct he claims violates the Human Rights Law.

The motion to amend is denied.

IV. CONCLUSIONS.

The motions to dismiss the complaint against Castle Gate, to remand, and to amend the complaint are all denied. The motion to dismiss the complaint against Abaris Realty is granted, subject to ultimate review by the Commission's Case Review Board.

So ORDERED.

Lutz Alexander Prager
Hearing Examiner

Dated: April 28, 2017

Serve:

Mark Schweitzer, Esq.
Matthew B. Barlow, Esq.
McNamee Hosea
6411 Ivy Lane, Suite 200
Greenbelt, MD 20770
Counsel for complainant

Ruth O. Katz, Esq.
Lerch, Early & Brewer, Chtd.
3 Bethesda Metro Center, Suite 460
Bethesda, MD 20814
Counsel for respondents