BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0131016252:

MONTANA FAIR HOUSING, INC.,	)	Case No. 863-2014
	)	
Charging Party,	)	
	)	NOVEMBER 10, 2014
vs.	)	MOTIONS ORDER
	)	AND NOTICE OF ISSUANCE OF
CITY OF MISSOULA,	)	ADMINISTRATIVE DECISION
	)	
	)	
Respondent.	)	

* * * * * * * * * * *

On May 22, 2014, the City filed and served "City of Missoula's Motion to Dismiss and for Summary Judgment," with supporting materials. On September 26, 2014, MFH filed and served "Charging Party's Brief in Opposition to Respondent's Motion for Summary Judgment," with supporting materials (this was timely because MFH had obtained several orders extending its deadline). On October 13, 2014, the City filed "City of Missoula's Reply in Support of Motion to Dismiss and for Summary Judgment." That motion is fully briefed, deemed submitted and granted and denied, in parts.

On September 26, 2014, MFH filed "Motion for Leave to File Charging Party's Second Amended Complaint and Brief in Support," with supporting materials (including the Second Amended Complaint). On October 13, 2014, the City filed "City of Missoula's Response to Motion for Leave to File Second Amended Complaint." MFH elected not to file a reply brief. That motion is fully briefed, deemed submitted and denied.

1. DISMISSAL/SUMMARY JUDGMENT

MFH's amended administrative complaint alleged that the City violated the Montana Government Code of Fair Practices, Mont. Code Ann. § 49-3-204 (Complaint and Amended Complaint, ¶¶ 1 and 8), § 49-3-205(1) (Complaint and Amended Complaint, ¶¶ 1 and 9) and Montana Human Rights Act, Mont. Code Ann. § 49-2-305 (Amended Complaint, ¶ 7), with its policy and practice of issuing building permits, inspecting residential construction of certain covered multifamily housing accommodations and issuing certificates of occupancy for certain covered

multifamily housing accommodations, all in a manner that made those housing accommodations unavailable to persons with disabilities.[1]

The City's motion asserted that the claims based upon Mont. Code Ann. §§ 49-3-204 and 205 were barred by the applicable statute of limitations (Mont. Code Ann. § 49-2-501) and that MFH was not entitled to amend its amended complaint to add a claim based on Mont. Code Ann. § 49-3-205(3). As the City's briefing made plain, the res judicata effect of two Federal District Court orders was also interposed in support of the motion.

In fact, central to the City's motion are two Federal District Court orders issued in USA and MFH v. Boote et al., CV 13-05-M-DWM, District of Montana, Missoula Division, in which MFH, by a Complaint in Intervention, brought identical or very similar state law discrimination claims against the City, in addition to a number of federal claims.

I. Motion to Dismiss and for Summary Judgment on MFH's 49-3-204 Claims

In his Order of April 3, 2014, Judge Molloy ruled that MFH's claims against the City under 49-3-204 could not be heard in the Federal District Court without first being "heard by and decision reached by the Human Rights Bureau" and therefore granted summary judgment to the City. April 3, 2014 Order, pp. 20-21 and 23.

In this current proceeding, the City argued that MFH could have presented its 49-3-204 claims in the federal proceeding, because the doctrine of res judicata bars litigation of claims that have already been or could have been litigated in a prior action. Brilz v. Metropolitan General Insurance Co., ¶¶ 18 and 27, 2012 MT 184, 366 Mont. 78, 285 P.3d 494. Judge Molloy expressly decided that MFH's 49-3-204 claims could not be litigated in his court because MFH had not exhausted its administrative remedies. His ruling was quite clear that the exhaustion of administrative remedies was required, which is what the Human Rights Act provision states, before getting to court. Mont. Code Ann. § 49-2-512(1).

This Hearing Officer might agree with the City's present argument that Mont. Code Ann. § 49-2-510(5)(a) and (b), provides a route to court, within the "procedures specified in this chapter" (the language of the exclusive remedy provision

[1] MFH's Preliminary Prehearing Statement alleges claims for violation of §§ 49-3-204 and 205(1) and 205(3), MCA, but does not contain any claims for violation of § 49-2-305. In its "Brief in Opposition to Respondent's Motion for Summary Judgment," p. 1, fn. 1, MFH agreed that its claims under Mont. Code Ann. §49-2-305 were "beyond jurisdiction of the Department of Labor & Industry pursuant to §49-2-510(5)(d)."

of 49-2-512(1)). The plain language in subsections 510(5)(a) and (b) appears to allow filing of housing complaints (under 49-2-305) within 2 years of the violation alleged or its discovery, whether or not a complaint has been filed with the department and without regard to the status of any such complaint (with an exception that once an administrative hearing has actually commenced, a civil complaint cannot be filed). Since the remedies for violations of the Governmental Code of Fair Practices Act track the remedies specified in the Human Rights Act, Mont. Code Ann. § 49-3-315, it might be reasonable to conclude that this same route to court would be available under both Acts, for housing related cases, including those under the licensing discrimination prohibitions of § 49-3-204.

Nonetheless, the Federal District Court summary judgment now on appeal to the Ninth Circuit decided that none of the Montana discrimination claims could be litigated in court without first going through the administrative process. That dismissal now bars, under 9th Circuit precedent, administrative filing of the Mont. Code Ann. § 49-3-204 claims. Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 714 (9th Cir. 2001) (res judicata effect of prior dismissed action applies to plaintiffs' Title VII claims that were not raised in that dismissed action, even if those claims were not raised because they were barred by not having yet received "right to sue" letters from the EEOC).

Owens is clearly contrary to the argument here that since no administrative complaint had been filed, and therefore MFH could not include those claims in its federal civil complaint, res judicata could not apply. MFH could have filed its administrative complaint, and either gotten a no merit determination and right to sue letter, or gotten a merit finding and then pursued the case in the administrative forum (as it is now attempting to do) or filed the Montana claims in the federal case and asserted that right under Mont. Code Ann. 49-2-510(5)(a) and (b), as briefly set forth above. By electing to take no action on the Montana claims, MFH placed itself in the same position as the plaintiff in Owens, by its own choice. The City is correct that the problem here involved timing rather than jurisdiction, and therefore was resolved by the Federal District Court decision, precluding the present proceeding.

Both sides cited Heyliger v. State University & Comm. Coll. Sys. of TN., 126 F.3d 849 (6th Cir. 1997). MFH is correct that Heyliger actually distinguishes between cases in which res judicata would apply and cases in which it would not, in a manner consistent with MFH's argument. In Heyliger at 854-56, the Sixth Circuit noted that "claim preclusion"[2] supported applying res judicata to bar Heyliger's Title

[2] The bar against plaintiff litigating a matter that never has been litigated is established by a judgment against the plaintiff in an earlier suit in which the matter at issue should have been

VII complaint filed in federal court, based upon the prior dismissal of a Tennessee Human Rights complaint regarding the same transactions and parties – later twice affirmed on appeals. However, the key fact was that Heyliger had requested and received his right to sue letter on the Title VII claims before the initial Tennessee court dismissed the state Human Rights complaint, and therefore Heyliger could have and should have tried to litigate his Title VII claims in the state court action by amendment (after he got his right to sue letter). Heyliger at 855

Heyliger quoted an earlier 6th Circuit decision, Whitfield v. City of Knoxville, 756 F.2d 455, 459-60 (6th Cir. 1985), quoted, Heyliger at 854:

> . . . the Tennessee courts have held that if a second lawsuit involves the same parties acting in the same capacities and touches the same subject matter as the first lawsuit, then the principles of res judicata apply. National Cordova Corp. v. City of Memphis, 214 Tenn. 371, 380 S.W.2d 793, 798 (1964); Grange Mutual Casualty Co. v. Walker, 652 S.W.2d 908, 909-10 (Tenn. App. 1983). . . . Thus, the doctrine of res judicata bars consideration of all claims that were or reasonably could have been litigated . . . in the state court action. American National Bank & Trust Co. v. Clark, 586 S.W.2d 825, 826 (Tenn. 1979); National Cordova Corp., 380 S.W.2d at 798; Gibson Lumber Co. v. Neely Coble Co., Inc., 651 S.W.2d 232, 234 (Tenn. App. 1983).

Getting to the pertinent point, Heyliger cited the Restatement (Second) of Judgments, § 25, Comment e: "When the plaintiff brings an action on the claim in a court, either state or federal, in which there is no jurisdictional obstacle to his advancing both theories or grounds, but he presents only one of them, and judgment is entered with respect to it, he may not maintain a second action in which he tenders the other theory or ground." Heyliger at 854.

In other words, Tennessee does not allow a plaintiff to split a cause of action when all related claims could be presented to the original tribunal. This is very clear in Heyliger's second Whitfield quote, id. at 460, Heyliger at 855:

> In order to determine whether Goin could have raised the federal claim in the Knox County Chancery Court action, we first examine the language of ADEA. Title 29 U.S.C. § 626(d)

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advanced. Heyliger at 852, quoting Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 77, n. 1, 104 S. Ct. 892, 894 n. 1, 79 L. Ed. 2d 56 (1984)

> provides that a private plaintiff such as Goin may not commence a § 626 age discrimination action until sixty days after the plaintiff has filed a charge with the EEOC. Moreover, where a state agency exists that may grant or seek relief from discriminatory practices, a private plaintiff may not commence a § 626 age discrimination action until sixty days after state administrative proceedings have commenced. 29 U.S.C. § 633(b); Oscar Mayer & Co. v. Evans, 441 U.S. 750, 753-58, 99 S. Ct. 2066, 2070-72, 60 L. Ed. 2d 609 (1979). Tennessee has created such an agency. See Tenn. Code Ann. §§ 4-21-103 & 4-21-104. Although a plaintiff need not wait longer than sixty days for a state agency to act, Evans, 441 U.S. at 761, a plaintiff must commence state proceedings and wait sixty days before filing an ADEA action.
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> In the present case, Mayor Tyree ordered Goin's involuntary retirement on December 16, 1982. The Chancery Court entered final judgment in favor of the City on February 8, 1983. Had Goin filed a charge with the EEOC and commenced state administrative proceedings on the same day that the Mayor ordered his involuntary retirement, sixty days still would not have elapsed before the Chancery Court entered final judgment. Thus, even had Goin wished to assert the ADEA claim during the pendency of the Chancery Court action, he could not have done so because of 29 U.S.C. § 626(d) and § 633(b). Since the ADEA claim could not have been raised in the Chancery Court action under the facts of this case, Goin's federal claim is not barred by principles of res judicata.

Brilz, the Montana Supreme Court decision on which the City relies, has virtually identical language to that in the Tennessee decisions cited in Whitfield:

> Again, claim preclusion bars the relitigation of a claim that the party has already had an opportunity to litigate. Baltrusch, ¶ 15. This includes claims that were or could have been litigated in the first action. Wiser v. Mont. Bd. of Dentistry., ¶ 17, 2011 MT 56, 360 Mont. 1, 251 P.3d 675; Somont Oil Co. v. A & G Drilling, Inc., ¶ 11, 2008 MT 447, 348 Mont. 12, 199 P.3d 241. Hence, as a result of the doctrine's application, a party may be prevented from litigating a matter that has never been litigated and that may involve valid rights for relief.

Brilz, op. cit. at ¶ 21.

But whether MFH could not properly have filed its 49-3-204 claims in the federal action, which is what the Federal District Court held, or MFH could properly have filed its 49-3-204 claims in the federal action (as the City argues in this proceeding), the Federal District Court's dismissal of the discrimination claims on summary judgment appears to be a bar to the Montana Human Rights claims, consistent with the holding in Owens. Even if there is a split in the Circuits on this precise issue, the District Court decision, here in the 9th Circuit, precludes advancing the 49-3-204 claims in this present proceeding, based on the 9th Circuit's existing precedent, although the outcome might well be different in the 6th Circuit.

Neither side has cited a Montana Supreme Court decision in which Montana, given the opportunity, ruled consistently with either Owens or Heyliger. This Hearing Officer is ruling, consistent with the applicable federal precedent, that claim preclusion applies. If the Hearing Officer is correct, the appeal to the 9th Circuit of the Federal District Court's order is the forum in which to raise the question of whether this is a question of federal law or state law, and if it is a question of state law, whether the Circuit might want to ask the Montana Supreme Court to weigh in. If the Hearing Officer is wrong, this case, on review, will present the opportunity for the Montana Human Rights Commission and then Montana's judicial branch to address that question.

MFH also argued that the licensing violations were "continuing violations," since if the "first floor" unit or units (basement units, according to the City) were not in compliance when approved, they still are not in compliance. MFH argues that "continuing violations" after the dismissal of its federal court complaint cannot possibly be barred by res judicata. The City convincingly argued that the alleged violations only occurred when the actual licensing decisions were made, and that any reiteration of those decisions, explanation of those decisions or defense of those decisions, with regard to the certain units involved in the particular original decisions, were not new violations or "continuing violations." The Hearing Officer agrees. With regard to the certain structures at issue in this case, MFH cannot gain any traction with assertions that every time the City stands behind the decisions it already made, that constitutes a new violation of the Government Code of Fair Practices licensing discrimination laws, which MFH, even though barred from attacking the original decisions, can now litigate. Indeed, MFH's argument about "continuing violations" is an attempt to obtain an opportunity to litigate the very claims that have been precluded.

Res judicata, or claim preclusion, applies to MFH's 49-3-204 claims in this current proceeding.

II. Motion to Dismiss and for Summary Judgment on MFH's 49-3-205 Claims

The doctrine of collateral estoppel (issue preclusion) bars a party from relitigating an issue previously litigated. Stewart v. Liberty Northwest Ins. Corp., ¶ 19, 2013 MT 107, 370 Mont. 19, 299 P.3d 820. The purpose of the doctrine is to bar a plaintiff from splitting a cause of action and securing inconsistent judgments. Id. No claims under Mont. Code Ann. § 49-3-205(1) (or under 3-205(3))[3] were made in the federal civil litigation. Both parties agree that all the elements of issue preclusion are met here, except whether the identical issue that is raised in the current litigation regarding 49-3-205(1) or (or under 3-205(3)) was previously decided in the Federal District Court proceeding.

According to the City, the issue the Federal District Court was required to resolve was:

> Did Missoula discriminate in the provision of services in violation of 42 USC § 3604(f)(2) or Section 49-2-305(4)(c), MCA, by reading, interpreting, and implementing the IBC when reviewing and approving the plans for and construction of the Inez Property?

The District Court did rule that the City did not discriminate in providing services in violation of 42 U.S.C. 3604(f)(2) or Mont. Code Ann. § 49-2-305(4)(c). Order of April 3, 2014, pp. 14-15, and 18-19.

The Hearing Officer in this case is asked to resolve the following issue:

> Did Missoula discriminate in the provision of services in violation of Mont. Code Ann. § 49-3-205(1) by reading, interpreting and implementing the IBC when reviewing and approving the plans for and construction of the Inez Property?

With regard to the conduct of the City in issuing the Building Permits and Certificates of Occupancy for the Inez property, this is precisely the same issue presented to and resolved by the District Court. That issue is barred by collateral estoppel.

With regard to the "continuing violations" regarding the Inez property, the analysis is exactly the same as for 49-3-204.

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[3] Mont. Code Ann. § 49-3-205(1) is the basis for claims asserted in the First Amended Complaint in this current proceeding. Mont. Code Ann. § 49-3-205(3) is the basis for claims that MFH wants to assert in the Second Amended Complaint it has asked leave to file in this current proceeding.

With regard to similar or identical conduct regarding other properties, although the amended complaint before this Hearing Officer contains the "include but are not limited to" language, the case to date focuses upon the Inez property. As to the Inez property, issue preclusion bars the 49-3-205(1) claims.

Even in the exhibits referenced by MFH, in its analysis of why collateral estoppel should not apply, the focus is upon the very acts taken by the City in issuing permits and certificates for the Inez property. "Brief in Opposition to Respondent's Motion for Summary Judgment," p. 22, citing "attached Exhibits 15, 17, 74, 88, and 103." The clear statements of MFH are that the City is still asserting that what it did regarding the Inez property was entirely proper, and it is continuing or will continue to do the same things regarding other housing accommodations presenting the same facts. Thus, the issue to be litigated is whether the City violated Montana law (Mont. Code Ann. § 49-3-205(1)) when it reviewed and approved the plans for and construction of the Inez Property

Collateral estoppel, or issue preclusion bars MFH's 49-3-205(1) claims herein.

III. Claim and Issue Preclusion Apply to the Same Actions by the City with regard to Other Properties.

MFH clearly aims to revisit the issue of the City engaging in the very same behavior as it did for the Inez property with other proposed housing accommodations in Missoula. There are general allegations in the complaint (i.e., "include but are not limited to") that demonstrate that aim. In this current proceeding, MFH has not identified any other housing accommodations involved except the Inez property. But, on its face, the elements required for res judicata and collateral estoppel (claim preclusion and issue preclusion) appear to be met for other such situations as well, whenever MFH challenges the City's conduct, in claims against the City, in reviewing and approving the plans for and construction of housing accommodations substantially identical to those on the Inez property that the City reviewed and approved.

This is not an easy question. MFH is not an individual charging party, but a public interest advocate for the rights of protected class people who historically (and often presently) are denied housing because of their protected class status. Barring MFH from taking up the same claims and issues with the City in cases involving other parties owning and constructing substantially housing accommodations substantially the same as those on the Inez property could implicate significant public policies. But that is the meaning of precedent. If the Federal District Court ruling is upheld on appeal, and the Hearing Officer is correct about the applications of res judicata and collateral estoppel, then MFH should be precluded from

challenging the City's position and conduct regarding these claims and issues, no matter what properties are involved, as between the City and MFH.

IV. Motion to Dismiss and for Summary Judgment, Statute of Limitations

Finally, the City correctly points out that the violations (not the alleged "continuing violations," but the actual original violations) occurred far enough in the past so that the statute of limitations would bar the claims if they were not barred by claim preclusion or issue preclusion. The original complaint in this proceeding was filed May 9, 2013. It identified the property involved as "including but not limited to" the Inez property. The Building Permits on that property were issued on August 2, 2011 and the Certificates of Occupancy were issued on February 8, 2012. MFH discovered the issuance of the Building Permits not later than September 6, 2011, the date it wrote to the owner of and the contractor for the Inez property, warning them that the property should be constructed in compliance with the MHRA and FFHAA. MFH knew that the Certificates of Occupancy had been issued by at least March 21, 2012, the date upon which it filed an administrative complaint against the owner of and the contractor for the Inez property, on March 21, 2012.

The procedures for enforcing the Montana Governmental Code of Fair Practices Act are the same as those for enforcing the Montana Human Rights Act. Mont. Code Ann. § 49-3-315. Except for complaints alleging violations of housing discrimination laws pursuant to Mont. Code Ann. § 49-2-510, or complaints for which the charging party has filed a grievance under a collective bargaining agreement or written rule or policy pursuant to Mont. Code Ann. § 49-2-501((4)(b), an administrative complaint under either Act must be filed within 180 days after the discriminatory practice alleged occurred or was discovered. Mont. Code Ann. § 49-2-501(4)(a). For alleged violations of housing discrimination laws under Mont. Code Ann. § 49-2-510, that statute likewise requires filing within 180 days after the discriminatory practice alleged occurred or was discovered. Mont. Code Ann. § 49-2-510(1).

The original administrative complaint in this proceeding was filed 646 days after issuance of the Building Permits on the Inez property, August 2, 2011, and 456 days after issuance of the Certificates of Occupancy. The complaint was filed 611 days after the latest date by which MFH could have discovered the issuance of the building permits and 407 days after the latest date by which MFH could have discovered the issuance of the Certificates of Occupancy.

Here, MFH argues "new violations," such as an ongoing failure to revoke the Certificate of Occupancy if the Inez property is at any time in violation of any ordinance or regulation or provision of the International Building Code. "Charging

Party's Brief in Opposition to Respondent's Motion for Summary Judgment," pp. 20-21. To make this a concrete claim about a real violation, MFH must litigate, to establish such "new" violations, the very claims that it did not timely assert – the alleged violations occasioned by the issuance of the permits and certificates. That is true of all the continuing violations that MFH asserts are fair game for it to litigate. None of these claims are based upon new laws, new facts coming to light, or concealed actions newly discovered by MFH. All of the more recent acts of the City alleged by MFH to be "new violations" depend, for their illegality, upon the issues of which MFH was at least aware for more than twice as long as the applicable statute of limitations.

The amended complaint in this proceeding is also barred by the statute of limitations with regard to the Inez property, the only property identified therein.

2. MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

MFH filed a motion for leave to file a second amended complaint, to add a claim against the City under Mont. Code Ann. 49-49-3-205(3), that the City has failed and refused to perform the analysis of all its operations regarding applying the state building codes in reviewing plans and specs in the design of issuance of Building Permits and Certificates of Occupancy. The circumstances under which the City has allegedly failed and refused are the precise circumstances involved in the Inez property that is the subject of the current proceeding. "Motion for Leave to File Charging Party's Second Amended Complaint and Brief in Support," filed and served September 26, 2014, Exhibit A, "Charging Party's Second Amended Complaint."

Admin. R. Mont. provides, in pertinent parts:

> (1) A charging party may amend a complaint to cure defects or omissions, including procedural defects or defects in verification, and to allege new facts and matters arising out of continuing violation of law. A charging party may also amend a complaint where an amendment is necessary to provide a respondent with fair notice of the allegations of a party.
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> . . . .
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> (6) To the extent the amendment of pleadings is not otherwise addressed in this rule, such amendments shall be governed by the provisions of Rule 15 of the Montana Rules of Civil Procedure.

Rule 15, Mont. R. Civ. P. provides, in pertinent parts:

> (a) Amendments before Trial

. . . .

(2) Other Amendments. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

. . . .

(c) Relation Back of Amendments.

(1) When an Amendment Relates Back. An amendment to a pleading relates back to the date of the original pleading when:

(A) the law that provides the applicable statute of limitations allows relation back;

(B) the amendment asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out -- or attempted to be set out -- in the original pleading . . . .

Both parties agreed that motions to amend should be "liberally construed" and that complaints should be easily amended. Citizens Awareness Network v. Montana Board of Environmental Review, ¶ 28, 2010 MT 10, 355 Mont. 60, 227 P.3d 583. The City objected to these specific amendments because of undue delay, undue prejudice and futility, citing Seamster v. Musselshell County Sheriff's Office, ¶ 14, 2014 MT 84, 374 Mont. 358, 321 P.3d 829. It appears MFH wants the amendment to relate back to complaint filing, but it is clear that the amendment also alleges conduct of the City within 180 days of filing that allegedly constituted violations of Mont. Code Ann. § 49-3-205(3).

The City's undue delay objections and undue prejudice objections were based upon the prehearing and hearing schedule in place when the motion was filed. The complaint was filed on May 9, 2013. Expert witnesses were to be disclosed by May 1, 2014. Discovery was to be completed by May 15, 2014. MFH's proposed Second Amended Complaint, if allowed, would probably require expert testimony and certainly would require additional discovery. Filing the motion after those deadlines had passed, with hearing just 2 months away, was, according to the City, undue delay that resulted in undue prejudice.

After this Hearing Officer was assigned this case, he conferred with counsel to confirm that both of the motions addressed in this order were submitted (which was

the case). He then vacated the hearing dates and the rest of the prehearing schedule because the press of his work would not permit him to rule upon the motions until the week of the scheduled hearing. As a result of that order, any prejudice to the City was obviated. In terms of undue delay, MFH has not provided any explanation for why the new claims were not included in the original or first amended complaint, nor has it offered an explanation of why relation back is fair and appropriate if the second amended complaint is allowed. Thus, if the amendment were allowed, the Hearing Officer would not allow it to relate back to May 9, 2013.

However, the City's objection based upon futility of the amendment is of greater weight. The Hearing Officer is granting the City's motion for summary judgment, and therefore, there is no viable complaint to be amended. MFH's motion to amend is therefore denied. That denial is not with prejudice to any right MFH has to file a new administrative complaint with the department, asserting any and all claims under Mont. Code Ann. 49-49-3-205(3) which are timely as of the date of filing. To any such future complaint, the City may be able to interpose some or all of the defenses upon which it has obtained summary judgment on the present complaint, but those issues are not presented in this proceeding, since the amendment is not allowed here.

ORDER

1. MFH's claims against the City under Mont. Code Ann. §§ 49-2-304 and 49-2-305(1) ((Amended Complaint, ¶ 7) are barred. MFH has conceded that it has it has no claims pursuant to Mont. Code Ann. § 49-2-305 within the department's jurisdiction. Therefore, the Amended Complaint of Montana Fair Housing, Inc., in this proceeding is NOW DISMISSED IN ITS ENTIRETY, WITH PREJUDICE.

2. MFH's motion to file its second amended complaint herein, asserting claims under Mont. Code Ann. §§ 49-3-305(3) is HEREBY DENIED, as not being in the interests of justice.

DATED: November 12, 2014

/s/ TERRY SPEAR
Terry Spear, Hearing Officer
Office of Administrative Hearings
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Timothy C. Kelly, Kelly Law Office, attorney for Montana Fair Housing, Inc., and Michael Lilly, Berg Lilly & Tollefsen, PC attorney for City of Missoula:

The decision of the Hearing Officer, above, granting "City of Missoula's Motion to Dismiss and for Summary Judgment," and dismissing the Amended Complaint with prejudice, as well as denying Montana Fair Housing, Inc.'s "Motion for Leave to File Charging Party's Second Amended Complaint and Brief in Support," is a Hearing Officer Final Decision, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission
c/o Marieke Beck
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).