

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

Mary Bagnaschi-Maher, : No. OPH/WBR-2005-013  
Complainant

v. :

Torrington Housing Authority, et al., : March 3, 2006  
Respondent

**RULING ON MOTION TO DISMISS**

The complainant filed this complaint pursuant to General Statutes § 4-61dd (b) (3) (A) on December 12, 2005, alleging that her former employer, the Torrington Housing Authority (THA), and two of its directors retaliated against her because she had engaged in protected "whistleblowing" activities.

On January 27, 2006, the respondents filed a motion to dismiss this action, claiming, among other things, that this tribunal lacks jurisdiction over the parties because they are not persons or entities covered by § 4-61dd and, moreover, that the complainant has not satisfied the jurisdictional prerequisites to bring this action. On February 3, 2006, the complainant filed a timely objection to the motion to dismiss. For the reasons set forth below, I must dismiss this complaint.

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *Jolly, Inc. v. Zoning Board of Appeals*, 237 Conn. 184 (1996); *Upson v. State*, 190 Conn. 622, 624 (1983). The motion admits all facts well-pleaded and invokes any record that accompanies the motion, including supporting affidavits that

contain undisputed facts. *Malasky v. Metal Products Corp.*, 44 Conn. App. 446, 451-52, cert. denied, 241 Conn. 906 (1997). In evaluating the motion, the complainant's allegations and evidence must be accepted as true and interpreted in a light most favorable to the complainant; every reasonable inference is to be drawn in her favor. *New England Savings Bank v. Bedford Realty Corp.*, 246 Conn. 594, 608 (1998). After review of the motions, along with the cases, pleadings, and other supporting materials referenced therein or attached thereto, I hereby grant the motion to dismiss for the reasons set forth below.

The primary purpose of General Statutes § 4-61dd is to enable employees of the state, quasi-public agencies, or large state contractors to disclose information about corruption, unethical practices, violation of laws, mismanagement, gross waste of funds, abuse of authority, or danger to the public safety occurring in any state department or agency, any quasi-public agency, or any large state contract. A person disclosing such information is known in lay terms as a "whistleblower." A whistleblower should feel free to report such information without fear of retaliation.<sup>1</sup> Thus, according to § 4-61dd (b) (1),

No state officer or employee, as defined in section 4-141, no quasi-public agency officer or employee, no officer or employee of a large state contractor and no appointing authority shall take or threaten to take any personnel action against any state or quasi-public agency employee or any employee of a large state contractor in retaliation for such employee's or contractor's disclosure of information to an employee of (i) the Auditors of Public Accounts

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<sup>1</sup> As Representative O'Rourke stated in legislative hearings on House Bill 5487, the purpose of the bill that, when passed as Public Act 02-91, gave this tribunal authority to adjudicate whistleblower-retaliation cases, was "to create a more favorable environment whereby state workers and employees of large state contractors feel free to bring forth important information of waste, fraud, abuse and possible cases of corruption . . ." 45 H.R. Proc., Pt. 9, 2002 Sess., p. 2857.

or the Attorney General under the provisions of subsection (a) of this section; (ii) the state agency or quasi-public agency where such state officer or employee is employed;<sup>2</sup> (iii) a state agency pursuant to a mandated reporter statute; or (iv) in the case of a large state contractor, to an employee of the contracting state agency concerning information involving the large state contract.

The complainant does not claim that the THA is a state agency, does not invoke any mandated reporter statute, and concedes that the housing authority is not a large state contractor. Instead, in her objection to the motion to dismiss, she argues that the THA is a quasi-public agency. Thus, as applied to the facts of this case, the statute purports to protect the complainant from retaliation by the respondents, provided that (1) the complainant is an employee of a quasi-public agency; (2) the respondent THA is a quasi-public agency and the individual respondents are employees thereof; and (3) that the respondents retaliated against the complainant because she disclosed certain information to employees of the state auditors or the attorney general under § 4-61dd (a), or to employees of respondent THA under § 4-61dd (b) (1). Construing the record in a light most favorable to the complainant, I nonetheless conclude that the complainant failed to satisfy any of these criteria and, consequently, this tribunal lacks jurisdiction over her complaint.

For the purposes of—and as explicitly stated in—§ 4-61dd, quasi-public agencies are defined in General Statutes § 1-120. According to § 1-120,

"Quasi-public agency" means the Connecticut Development Authority, Connecticut Innovations, Incorporated, Connecticut Health and Educational

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<sup>2</sup> The phrase "state officer or employee" refers not to an employee who has exercised her rights under this statute (i.e., the complainant), but to the person or persons who took or threatened the retaliatory action.

Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Capital City Economic Development Authority and Connecticut Lottery Corporation.

The complainant has provided--and I am aware of--no legal authority that would expand this definition to include other entities by implication. Indeed, as stated in General Statutes § 1-2z, "The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." The statute makes no reference to municipal housing authorities and, because the statute is both clear and self-limiting on its face, one need not examine other sources in an attempt to determine precisely whom the legislature intended to regulate.

Even further inquiry would not change the disposition of this issue. Each of the entities identified in § 1-120 is described as a "public instrumentality and political subdivision of this state." (See, respectively, General Statutes §§ 32-11a, 32-35, 10a-179, 10a-224, 8-244, 8-119zz, 22a-261, 22a-134bb, 32-601, and 12-802.) Municipal housing authorities are created pursuant to § 8-40 and are overseen not by the state but by the "governing body of the municipality" that they serve. Nothing in the statutes puts a municipal housing authority on the same legal footing as the quasi-public agencies.

Accordingly, the THA is legally distinct from the quasi-public agencies identified in § 1-120 and thus is not covered by § 4-61dd; therefore, respondents Sweeney and Torres, as employees of the THA, are not employees or officers of a quasi-public agency. Likewise, the complainant herself is not an employee of a quasi-public agency.

Finally, the complainant contends that the respondents are violating or have violated "Fair and Equal Housing laws and Equal Opportunity laws." She alleges, under oath, that she disclosed this information to certain named employees of the Housing and Urban Development ("HUD") office in Hartford, the HUD office in Boston, and the Office of Fair Housing and Equal Opportunity in Boston. (Complaint, part 7) In her response to the motion to dismiss, the complainant also indicates, "I have reported my complaint to as many resources as possible, including the Board of Commissioners, the Mayor of the City of Torrington, HUD, and The State of CT. If I have failed to file a complaint with the correct person or agency, please inform me of the necessary steps I must take to put a stop to my employer's illegal activity." Neither the recipients of the disclosure identified in the complaint nor those identified in the response to the motion fall under the aegis of § 4-61dd (b) (1). Thus, the complainant has failed to satisfy this jurisdictional prerequisite as well.

In conclusion, the THA is not a quasi-public agency, respondents Sweeney and Torres are not employees of a quasi-public agency, the complainant herself is not an employee of a quasi-public agency, and the complainant did not disclose information (i.e., "blow the whistle") to any of the persons or entities listed in § 4-61dd (b) (1). Accordingly, this

tribunal lacks jurisdiction over the complainant and it must be, and hereby is, dismissed.

See *Cross v. Nearine*, 1995 Conn. Super. LEXIS 498, 17-18.

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Date

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David S. Knishkowsky  
Human Rights Referee

Copies sent on this date via certified mail,  
return receipt requested, to all parties of record.