

**STATE OF CONNECTICUT
OFFICE OF PUBLIC HEARINGS**

Paula Pisano, : No. OPH/WBR-2009-100
Complainant

v. :

Newington Housing Authority, : May 12, 2009
Town of Newington, Respondents

RULING ON MOTIONS TO DISMISS

On March 25, 2009, the complainant filed a whistleblower retaliation complaint pursuant to General Statutes § 4-61dd (b) against both her employer, the Newington Housing Authority, and the Town of Newington. On April 13, 2009, the respondent town filed a motion to dismiss this case for lack of jurisdiction. On April 28, the respondent housing authority filed a similar motion to dismiss. The complainant filed her objections to the motions on May 8, 2009.

A motion to dismiss is an appropriate means to challenge a tribunal's jurisdiction to hear an action. *State v. Smith*, 289 Conn. 598, 608 (2008); *Bellman v. Town of West Hartford*, 96 Conn. App. 387, 392 (2006). 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. *Thomas v. City of West Haven*, 249 Conn. 385, 392 (1999); see also *Proietto v. Whitney Manor Convalescent Center, Inc.*, 2006 WL 4753473 (CT. Civ. Dec.) (No. OPH/WBR 2005-009, March 1, 2006); *Bagnaschi-Maher v. Torrington Housing Authority*,

2006 WL 4753459 (CT. Civ. Dec.) (No. OPH/WBR 2005-013, March 3, 2006). For the reasons set forth below, both motions to dismiss are granted.

The primary purpose of General Statutes § 4-61dd is to enable employees of the state, quasi-public agencies, or large state contractors to make, with impunity, good faith disclosures 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. 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 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; (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.

See *Bagnaschi-Maher v. Torrington Housing Authority*, supra, 2006 WL 4753459.

The complainant does not claim that the housing authority is a state agency or large state contractor;¹ she also invokes no mandated reporter statute. Rather, she claims that the housing authority is a quasi-public agency and, by implication, that she is an employee of a quasi-public agency. She is, however, incorrect.

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

¹ In her objection to the motions to dismiss, the complainant reiterates that neither respondent is a state agency or large state contractor. (Memorandum in Opposition, p. 3)

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

As this tribunal stated in *Bagnaschi-Maher v. Torrington Housing Authority*, supra,

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 [housing authority] is legally distinct from the quasi-public agencies identified in § 1-120 and thus is not covered by § 4-61dd Likewise, the complainant herself is not an employee of a quasi-public agency.

(Emphasis added.) The legal principles discussed in *Bagnaschi-Maher* are directly on point for purposes of the housing authority's motion, and they must guide the outcome of the matter before me. Although the complainant cites to a recent Superior Court case, *West v. New Haven Housing Authority*, 2006 WL

1680067 (Conn. Super.), for the proposition that the housing authority is, in fact, a quasi-public agency (Memorandum in Opposition, p. 5), the *West* case concerns civil liability under the 14th Amendment and 42 U.S.C. §1983, whereas a quasi-public agency for purposes of General Statutes § 4-61dd, is expressly limited to list in § 1-120. Accordingly, the complainant against the housing authority must be dismissed for lack of jurisdiction.

Similarly, this tribunal has no jurisdiction over the town itself. Part 6 of the “boilerplate” complaint form requires a complainant to indicate whether the respondent is a state agency, a quasi-public agency, a large state contractor, an appointing authority, or “none of the above.” The complainant indicated “none of the above,” and added that the town was a municipal corporation. By her own assessment, she acknowledges that the town is not regulated by § 4-61dd and this lies beyond the jurisdiction of this tribunal. See *Dax v. Baram Institute of Technology*, 2008 WL 916959 (CT Civ. Rts.) (No. OPH/WBR-2008-068, March 4, 2008).

For purposes of § 4-61dd, a state officer or employee includes “every person elected or appointed to or employed in any office, position or post, in the state government”; a state agency is defined as a “department, division, board, office, commission, arm, agency and institution of the state government, whatever its title or function.” General Statutes § 4-141. The complainant has offered no cogent or convincing demonstration that, for purposes of § 4-61dd, the town qualifies as a state agency or that she, in turn, is a state employee. She is, in fact, an employee of the housing authority alone, and the housing authority is a corporate entity separate from and independent of the town. See, e.g., *Gordon v. Bridgeport Housing Authority*, 208 Conn. 161, 172 (1988); *Daconto v. Trumbull Housing Authority*, 2008 WL 442147, *3 (Conn. Super.). Thus, the complainant against the town must be dismissed for lack of jurisdiction.

Both motions to dismiss are hereby GRANTED.

David S. Knishkowsky
Human Rights Referee

Copies of the foregoing ruling sent on
this day to all parties of record via
certified mail, return receipt requested.

Encl.—party list