



U.S. Department
of Transportation
**Federal Highway
Administration**

AUG 30 2011

1200 New Jersey Ave., SE
Washington, D.C. 20590

In Reply Refer To: HCR-40
DOT #2011-0092

(b) (6)

Dear **(b) (6)**:

The Federal Highway Administration (FHWA) has completed the investigation of your complaint of discrimination against the Nevada Department of Transportation, herein after referred to as the Respondent, alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI). Your alleged discrimination is based on your race, African American.

Background

The complaint involves the Respondent's Interstate 15 (I-15) expansion project. You alleged that the construction of the project caused cracks in the foundation of your home; cracks in the walls of your home in the living room area; and cracks in the cement block wall outside and in the front of your home. The complaint was received in the FHWA Office of Civil Rights by e-mail on January 2, 2011, from the FHWA Nevada Division Office. The issues raised in the complaint are addressed below.

Issue #1: Whether your home was damaged during the construction of the I-15 expansion project.

The investigation disclosed that you filed a complaint with the Respondent in April or May of 2009 regarding the alleged damage to your home. The Respondent referred the complaint to the contractor whose insurance carrier hired an independent Structural Engineer consultant to inspect your home during May 2009.

Record evidence shows that after the inspection, you were notified by letter dated May 19, 2009, that your claim had been denied. The letter advised you that the denial was based on the finding of the Geotechnical Engineer who concluded that your property was too far from the I-15/F Street bridge demolition work to have suffered construction vibration damage. The distress to the interior walls, ceilings, and stucco, as well as the uneven floors was unrelated to the demolition work at the I-15/F Street Bridge. The findings concluded that the distress to your home was most likely caused by long-term processes, including soil movement within the unconsolidated alluvium and episodic changes in moisture in the crawlspace.

Investigation disclosed that you contacted your home owner's insurance company, which also inspected your property. You indicated that your home owner's insurance company also concluded that the damage to the property pre-existed the construction and was due to the age of the property.

Investigation further disclosed that the prime contractor arranged for a second inspection of your property. On July 8, 2010, you were advised of the results of the second inspection which stated that there was insufficient information to prove that the loss was the result of the project—damages appeared to be age related. The report further stated that the distance from your home to the construction site was too vast for the damages to the home to be related.

Conclusion

The evidence shows that your home was inspected on three separate occasions. In each instance, the conclusion was the same—that the damage to your home was not caused by the I-15 expansion project.

Issue #2: Whether the Respondent failed to take appropriate action regarding your concerns about the alleged damage to your home.

Record evidence shows that the Respondent contacted the contractor regarding your concern. The contractor performed inspections on the property which failed to show that the damage cited by you was caused by the I-15 expansion project.

Conclusion

Based on the findings of the inspection reports, concluding that your property was not damaged by the I-15 expansion project, there is no basis for the Respondent to take any action regarding the concerns raised by you in this complaint.

Comparative Data

The I-15 expansion project covered 15 to 20 miles of highway. The investigation failed to disclose that any other homeowners filed claims of damage with the Respondent regarding the project.

THEORIES OF DISCRIMINATION AND ELEMENTS OF PROOF

Title VI prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance. The purpose of Title VI is to ensure that public funds are not spent in a way which encourages, subsidizes, or results in discrimination.

Title VI claims may be proven under two primary theories: intentional discrimination/disparate treatment and disparate impact/effects. Under the intentional discrimination/disparate treatment theory, the recipient engages in intentional discrimination based on race, color, or national origin. Under the disparate impact/effects theory, the recipient uses a neutral procedure or

practice that has a disparate impact on individuals of a particular race, color, or national origin, and such practice lacks a “substantial legitimate justification.”

Your complaint involves the intentional discrimination/disparate treatment theory of discrimination.

Intentional Discrimination/Disparate Treatment

An intent claim alleges that similarly-situated persons are treated differently because of their race, color, or national origin. To prove intentional discrimination, one must show that a challenged action was motivated by an intent to discriminate. This requires a showing that the decisionmaker was not only aware of the complainant’s race, color, or national origin, but that the recipient acted, at least in part, because of the complainant’s race, color, or national origin.

The investigating agency must first determine if the complainant can raise an inference of discrimination by establishing a prima facie case. The elements of a prima facie case may include the following:

1. That the complainant is a member of a protected group;
2. That the complainant applied for, and was eligible for, a federally assisted program or benefit;
3. That despite the complainant’s eligibility, the complainant was rejected; and,
4. That the recipient treated others not in the complainant’s protected group differently.

The elements of proof are discussed below.

1. Whether you are a member of a protected group.

You are a member of a protected group by nature of your race, African American.

2. Whether you applied for and was eligible for a federally assisted program or benefit.

You requested that the Respondent, a recipient of Federal financial assistance, pay for the damage to your home allegedly caused by the Respondent’s I-15 expansion project.

3. Whether despite your eligibility, your request was denied.

The investigation disclosed that the Respondent denied your request. However, record evidence shows that the denial was based on inspection reports which failed to show that the damage cited by you was caused by the Respondent’s I-15 expansion project.

4. **Whether others not in your protected group were treated differently.**

The evidence failed to show that the Respondent received complaints from other residents along the project route.

The record fails to show that the damage to your home was caused by the Respondent's I-15 expansion project. The record has established that the damage to your home pre-existed the construction of the project. Therefore, the Respondent had no obligation to provide a benefit to you for the damage to your home.

Decision

Based on the evidence obtained and reviewed during the investigation of this complaint, the FHWA concludes that the evidence does not support your allegation that Title VI was violated by the Respondent.

This concludes processing of this complaint and no further action will be taken by the FHWA.

Sincerely yours,



Brenda F. Armstead
Director, Investigations and Adjudications



U.S. Department
of Transportation
**Federal Highway
Administration**

AUG 30 2011

1200 New Jersey Ave., SE
Washington, D.C. 20590

In Reply Refer To: HCR-40
DOT #2011-0092

Ms. Norma J. Norman
Civil Rights Officer
Nevada Department of Transportation
123 E. Washington Street
Las Vegas, Nevada 89101

Dear Ms. Norman:

The Federal Highway Administration (FHWA) has completed the investigation of the complaint of discrimination filed by (b) (6), herein after referred to as the Complainant, against the Nevada Department of Transportation, herein after referred to as the Respondent, alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI). The Complainant's alleged discrimination is based on his race, African American.

Background

The complaint involves the Respondent's Interstate 15 (I-15) expansion project. The Complainant alleged that the construction of the project caused cracks in the foundation of his home; cracks in the walls of his home in the living room area; and cracks in the cement block wall outside and in the front of his home. The complaint was received in the FHWA Office of Civil Rights by e-mail on January 2, 2011, from the FHWA Nevada Division Office. The issues raised in the complaint are addressed below.

Issue #1: Whether the Complainant's home was damaged during the construction of the I-15 expansion project.

The investigation disclosed that the Complainant filed a complaint with the Respondent in April or May of 2009 regarding the alleged damage to his home. The Respondent referred the complaint to the contractor whose insurance carrier hired an independent Structural Engineer consultant to inspect the Complainant's home during May 2009.

Record evidence shows that after the inspection, the Complainant was notified by letter dated May 19, 2009, that his claim had been denied. The letter advised the Complainant that the denial was based on the finding of the Geotechnical Engineer who concluded that the Complainant's property was too far from the I-15/F Street bridge demolition work to have suffered construction vibration damage. The distress to the interior walls, ceilings, and stucco, as well as the uneven floors was unrelated to the demolition work at the I-15/F Street Bridge. The findings concluded that the distress to the Complainant's home was most likely caused by long-term processes,

including soil movement within the unconsolidated alluvium and episodic changes in moisture in the crawlspace.

Investigation disclosed that the Complainant contacted his home owner's insurance company, which also inspected his property. The Complainant indicated that his home owner's insurance company also concluded that the damage to the property pre-existed the construction and was due to the age of the property.

Investigation further disclosed that the prime contractor arranged for a second inspection of the Complainant's property. On July 8, 2010, the Complainant was advised of the results of the second inspection which stated that there was insufficient information to prove that the loss was the result of the project—damages appeared to be age related. The report further stated that the distance from the Complainant's home to the construction site was too vast for the damages to the home to be related.

Conclusion

The evidence shows that the Complainant's home was inspected on three separate occasions. In each instance, the conclusion was the same—that the damage to the Complainant's home was not caused by the I-15 expansion project.

Issue #2: Whether the Respondent failed to take appropriate action regarding the Complainant's concerns about the alleged damage to his home.

Record evidence shows that the Respondent contacted the contractor regarding the Complainant's concern. The contractor performed inspections on the property which failed to show that the damage cited by the Complainant was caused by the I-15 expansion project.

Conclusion

Based on the findings of the inspection reports, concluding that the Complainant's property was not damaged by the I-15 expansion project, there is no basis for the Respondent to take any action regarding the concerns raised by the Complainant in this complaint.

Comparative Data

The I-15 expansion project covered 15 to 20 miles of highway. The investigation failed to disclose that any other homeowners filed claims of damage with the Respondent regarding the project.

THEORIES OF DISCRIMINATION AND ELEMENTS OF PROOF

Title VI prohibits discrimination on the basis of race, color, or national origin under any program or activity receiving Federal financial assistance. The purpose of Title VI is to ensure that public funds are not spent in a way which encourages, subsidizes, or results in discrimination.

Title VI claims may be proven under two primary theories: intentional discrimination/disparate treatment and disparate impact/effects. Under the intentional discrimination/disparate treatment theory, the recipient engages in intentional discrimination based on race, color, or national origin. Under the disparate impact/effects theory, the recipient uses a neutral procedure or practice that has a disparate impact on individuals of a particular race, color, or national origin, and such practice lacks a “substantial legitimate justification.”

The Complainant’s complaint involves the intentional discrimination/disparate treatment theory of discrimination.

Intentional Discrimination/Disparate Treatment

An intent claim alleges that similarly-situated persons are treated differently because of their race, color, or national origin. To prove intentional discrimination, one must show that a challenged action was motivated by an intent to discriminate. This requires a showing that the decisionmaker was not only aware of the complainant’s race, color, or national origin, but that the recipient acted, at least in part, because of the complainant’s race, color, or national origin.

The investigating agency must first determine if the complainant can raise an inference of discrimination by establishing a prima facie case. The elements of a prima facie case may include the following:

1. That the complainant is a member of a protected group;
2. That the complainant applied for, and was eligible for, a federally assisted program or benefit;
3. That despite the complainant’s eligibility, the complainant was rejected; and,
4. That the recipient treated others not in the complainant’s protected group differently.

The elements of proof are discussed below.

1. Whether the Complainant is a member of a protected group.

The Complainant is a member of a protected group by nature of his race, African American.

2. Whether the Complainant applied for and was eligible for a federally assisted program or benefit.

The Complainant requested that the Respondent, a recipient of Federal financial assistance, pay for the damage to his home allegedly caused by the Respondent’s I-15 expansion project.

3. **Whether despite the Complainant's eligibility, his request was denied.**

The investigation disclosed that the Respondent denied the Complainant's request. However, record evidence shows that the denial was based on inspection reports which failed to show that the damage cited by the Complainant was caused by the Respondent's I-15 expansion project.

4. **Whether others not in the Complainant's protected group were treated differently.**

The evidence failed to show that the Respondent received complaints from other residents along the project route.

The record fails to show that the damage to the Complainant's home was caused by the Respondent's I-15 expansion project. The record has established that the damage to the Complainant's home pre-existed the construction of the project. Therefore, the Respondent had no obligation to provide a benefit to the Complainant for the damage to his home.

Decision

Based on the evidence obtained and reviewed during the investigation of this complaint, the FHWA concludes that the evidence does not support the Complainant's allegation that Title VI was violated by the Respondent.

This concludes processing of this complaint and no further action will be taken by the FHWA.

Sincerely yours,



Brenda F. Armstead
Director, Investigations and Adjudications

cc:

Ms. Susan E. Klekar, Division Administrator, FHWA, HDA-NV

Mr. Kevin L. Resler, Civil Rights Program Manager, FHWA, HDA-NV