

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 03-cv-01364-JLK

SCOT HOLLONBECK, et al.,

Plaintiffs,

v.

UNITED STATES OLYMPIC COMMITTEE, a federally-chartered corporation, et al.,

Defendants.

PLAINTIFFS' SECOND SUBMISSION OF SUPPLEMENTAL AUTHORITY

Plaintiffs, by and through their attorneys, respectfully submit the recently-decided Third Circuit case of Addiction Specialists, Inc. v. Township of Hampton, 411 F.3d 399 (3d Cir. 2005), as supplemental authority in opposition to Defendants' Motion to Dismiss Vie Sports Marketing, Inc.'s Federal Discrimination Claims for Lack of Subject Matter Jurisdiction Pursuant to Fed. R. Civ. P. 12(b)(1) ("Defendants' Mot. to Dismiss Vie"). A copy of the case is attached.

In its Motion to Dismiss Vie, Defendants relied on the case of Discovery House, Inc. v. Consolidated City of Indianapolis, 319 F.3d 277 (7th Cir. 2003), to argue that Plaintiff Vie Sports Marketing, Inc. ("Vie") did not have standing under the Rehabilitation Act, 29 U.S.C. § 794, to seek compensatory damages that would not directly benefit people with disabilities. (See Defendants' Mot. to Dismiss Vie at 5-8.) In Addiction Specialists, Inc. v. Township of Hampton, the Third Circuit expressly rejected this holding. 411 F.3d 399, 406 (3d Cir. 2005).

Like Discovery House, Addiction Specialists involved a methadone clinic (“ASI”) bringing suit under, among other statutes, the Rehabilitation Act for relief that included compensatory damages for lost profits. The defendant in Addiction Specialists relied on Discovery House to argue -- as Defendants do here -- that the plaintiff did not have standing to recover such damages because they did not benefit people with disabilities. Addiction Specialists, 411 F.3d at 406. The Third Circuit held that such a limitation is improper.

The court noted that an entity may bring suit on its own behalf as well as on behalf of its members, id. at 406-07, and explained:

As we understand it, the Seventh Circuit’s decision in Discovery House assumes that an entity bringing suit under . . . the [Rehabilitation Act] must necessarily assert the rights of its members rather than bringing suit “in its own right.” This ignores that the protections of the . . . [Rehabilitation Act] have been extended to shield entities themselves from discrimination. Although ASI is protected by these statutes only by virtue of its association with disabled individuals, ASI’s standing to sue arises from its own alleged injuries, not those of its clients. See 28 C.F.R. § 35.130(g). As such, we decline to follow the Seventh Circuit’s premise that a methadone clinic has standing “only because it provides services . . . to persons presumably covered by those Acts.” Discovery House, 319 F.3d at 281.

Addiction Specialists, at 407 (emphasis in original). This was based on the court’s holding that standing under the Rehabilitation Act extends to the limits of Article III of the Constitution. Id.; accord Tandy v. City of Wichita, 380 F.3d 1277, 1287 (10th Cir. 2004).

In the present case, Defendants acknowledge that Vie may and does bring suit on its own behalf. (Defs.’ Mot. to Dismiss Vie at 5.) Based on both Tandy and Addiction Specialists, Vie has standing to sue for its own injuries, including lost profits.

Conclusion

For the reasons set forth above and in Plaintiffs' Opposition to Motion to Dismiss Vie, Defendants' motion should be denied.

Certification under D. Colo. L. R. 7.1A

The undersigned certifies that she conferred with counsel for Defendants who represented that Defendants did not object to this submission provided that they be given an opportunity to file a response of comparable length. Plaintiffs do not object to such a response.

Respectfully submitted,

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Dated: August 1, 2005

Certificate of Service

I hereby certify that on August 1, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email address:

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and I hereby certify that I have mailed the document to the following non-CM/ECF participant in by first class mail, postage prepaid:

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