

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BEV ORR,

Plaintiff,

MEMORANDUM and ORDER
06-C-429-S

v.

BRENDA KONKEL, Director,
Tenant Resource Center,

Defendant.

Plaintiff Bev Orr was allowed to proceed on her claim that defendant Brenda Konkkel refused to use FEMA funds to which plaintiff was entitled to prevent her eviction.

Defendant moved for summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure, submitting proposed findings of facts, conclusions of law, affidavit and brief in support thereof. Pursuant to this Court's November 7, 2006 Scheduling Order plaintiff's brief in opposition to defendant's motion for summary judgment was to be filed not later than January 8, 2007 and has not been filed to date.

On a motion for summary judgment the question is whether any genuine issue of material fact remains following the submission by both parties of affidavits and other supporting materials and, if not, whether the moving party is entitled to judgment as a matter of law. Rule 56, Federal Rules of Civil Procedure.

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. An adverse party may not rest upon the mere allegations or denials of the pleading, but the response must set forth specific facts showing there is a genuine issue for trial. Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

There is no issue for trial unless there is sufficient evidence favoring the non-moving party that a jury could return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

FACTS

For purposes of deciding defendant's motion for summary judgment the Court finds there is no genuine dispute as to any of the following material facts.

Plaintiff Bev Orr is an adult resident of Wisconsin. Brenda Konkel is the director of the Tenant Resource Center. The Tenant Resource Center is an approved Local Recipient Organization for the Emergency Food and Shelter Program (the Program).

The Program is a federal program created by the United States Congress to provide emergency food and shelter to needy

individuals. 42 U.S.C. §§ 11331-11352(2006). Funds for the Program are appropriated by Congress to the Federal Emergency Management Agency (FEMA) but the program has its own National Board. This Board distributes funds directly to eligible Local Recipient Organizations (LRO's) such as the TRC.

The TRC distributes these federal funds to individuals in its service area in an effort to prevent their evictions. The TRC received \$10,400.00 in program funds for 2006, but received requests for \$995,511.00 in the first ten months of 2006.

TRC does not provide any applicant with a full month's rent but requires applicants to have other sources of funds for the total rent. This allows the TRC to assist more people. The purpose of TRC funds is for relief in emergency situations and not to replace other sources for rent payments.

In June 2006 plaintiff completed an application for program funds distributed by TRC. TRC paid \$200.00 on her behalf to Apex Property Management at 1741 Commercial Avenue, Madison, Wisconsin on July 5, 2006. This amount was only a portion of her rent payment.

MEMORANDUM

Defendant moves for summary judgment on plaintiff's claim that she violated federal law by not providing her additional FEMA funds. In opposing defendant's motion for summary judgment plaintiff cannot rest on the mere allegations of her pleadings but

must submit evidence that there is a genuine issue of material fact for trial. Plaintiff has failed to submit any affidavit or other evidence which contradicts the affidavit submitted by the defendant. There is no genuine issue of material fact, and this case can be decided on summary judgment as a matter of law.

Plaintiff contends that she was entitled to more money than the \$200.00 that TRC distributed to her. The TRC has discretion regarding how it disburses the federal funds. The National Board does not require that applicants for program funds receive a full month's rent. See 64 Fed. Reg. 22912, et seq.

The TRC has established a reasonable policy for the distribution of the funds. The TRC does not provide any applicant with a full month's rent but requires applicants to have other sources of funds for the total rent. The purpose of this policy is to enable more people to receive emergency rent assistance.

Plaintiff received a portion of her rent from TRC. She has not shown that under federal law she is entitled to any more assistance. Further, plaintiff has not shown that she received different treatment than any other applicant.

As a matter of law defendant is entitled to judgment in her favor on plaintiff's claim. Accordingly, defendant's motion for summary judgment will be granted.

Plaintiff is advised that in any future proceedings in this matter she must offer argument not cumulative of that already provided to undermine this Court's conclusion that her claims must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that defendant's motion for summary judgment is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendant against plaintiff DISMISSING her complaint and all claims contained therein with prejudice.

Entered this 11th day of January, 2007.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge