

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO. HN25QT-63080

Shakisha Wallace,)
)
 Complainant,)
)
 v.)
)
 374 Sairs Avenue, LLC &)
 Scott Kelly,)
)
 Respondents.)

Administrative Action

FINDING OF PROBABLE CAUSE

This is a housing discrimination case. Monmouth County resident Shakisha Wallace (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that 374 Sairs Avenue, LLC, and its owner, Scott Kelly, refused to rent an apartment to her at 374 Sairs Avenue, Long Branch, New Jersey, based on her "source of lawful income used for rental . . . payments" in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. See Verified Complaint, at ¶13. DCR's ensuing investigation found as follows.

Respondent 374 Sairs Avenue, LLC, is the listed owner of the property at issue, a Victorian-style house with five apartment units. Respondent Kelly, an attorney licensed in New Jersey, is the registered agent for 374 Sairs Avenue, LLC. He does not live at the property.

The Section 8 housing voucher program is funded by the U.S. Department of Housing and Urban Development (HUD) and administered by the New Jersey Department of Community Affairs. See Pasquince v. Brighton Arms Apartments, 378 N.J. Super. 588, fn 1. (App. Div. 2005). It provides financial assistance to eligible persons so that they may rent privately owned housing. Ibid. A person deemed eligible for assistance is issued a housing choice voucher that verifies eligibility for assistance and that money is being set aside to assist the person with paying his or her rent. See Franklin Tower One v. N.M., 157 N.J. 602 (1997). Generally, the tenant pays no

more than thirty percent of his/her household income toward the monthly rent. Ibid. (citing 42 U.S.C.A. § 1437f(o)(11)(B)(ii)). The local agency administering the Section 8 funds enters into a separate Housing Assistance Payment (HAP) contract with the owner, pursuant to which the agency agrees to pay the balance of the fair market rent as established by HUD. Ibid.

Complainant alleges that on or about February 22, 2012, she saw an apartment being advertised for rent on *Craigslist.com*. She alleges that she called the telephone number listed in the advertisement, 732-687-XXXX, and was told by the woman who answered the phone that the landlord did not accept Section 8 vouchers. Complainant said that she called the landlord a few days later to follow up. She produced what she claimed was a recording of the telephone conversation:

Man: Hello. Who is this? Hello.

Complainant: Hello. Hi. I am calling for apartment, for sect, I mean the two bedroom in Long Branch.

Man: Okay.

Complainant: I am trying to get. Looking for an apartment in Long Branch. I have a housing choice voucher.

Man: Okay. Sorry. I don't take Section 8 or Assistance.

Complainant: Why is that?

Man: Because I just don't. Cause I used to but not anymore.

Complainant: Okay. That's unfortunate.

Man: I'm sorry. There are a lot of places that do. Good luck to you.

Complainant: Thank you. Bye bye.

Kelly told DCR that he did not recall speaking with Complainant about the apartment but acknowledged that he did not accept tenants with Section 8 vouchers. He stated that he had a bad experience with a previous tenant who relied on Section 8 assistance. He produced a copy of the advertisement that was posted on *Craigslist.com*. It stated in part, "Absolutely no pets please, don't even ask. Non-smoker preferred. Section 8 is not accepted."

Analysis

In enacting the Section 8 housing voucher program, Congress sought to help low-income families obtain a "decent place to live" and promote "economically mixed housing." See Note, 31 *Cardozo L. Rev.* 1407 (2010) (quoting 42 U.S.C. § 1437f (a)). The program seeks to reduce dependency on public housing by allowing low-income individuals access to the private rental market. Ibid.

The LAD makes it illegal for "any person, including but not limited to, any owner, lessee, sublessee, assignee or managing agent . . . or other person having the right of ownership or possession of or the right to sell, rent, lease, assign, or sublease any real property or part or portion thereof," to refuse to rent property to a prospective tenant because of a "source of lawful income used for rental or mortgage payments." See N.J.S.A. 10:5-12(g)(1).

The LAD also makes it illegal "to cause to be printed, published [or] circulated" any advertisement that "expresses . . . any limitation, specification, or discrimination as to . . . source of lawful income used for rental or mortgage payments." See N.J.S.A. 10:5-12(g)(3).

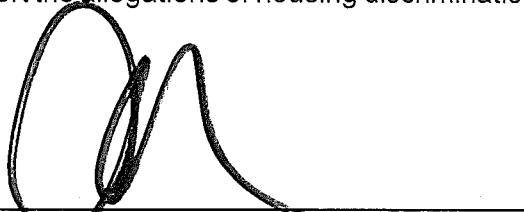
At the conclusion of an investigation, the Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2. "Probable cause," for purposes of this analysis, means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." Ibid. A finding of probable cause is not an

adjudication on the merits, but merely an initial “culling-out process” whereby the DCR makes a threshold determination of “whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799 (1991). Thus, the “quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits.” Ibid.

In this case, there is no dispute that Respondents posted a rental advertisement that stated, “Section 8 is not accepted.” There is no dispute that Section 8 housing assistance is a “source of lawful income used for rental . . . payments” as that term is applied in the LAD. Respondents do not deny Complainant’s assertion that she called twice about the apartment and was told on both occasions that the landlord would not consider renting to persons with Section 8 vouchers. Kelly told DCR that he did not recall speaking with Complainant, but acknowledged that he was not accepting tenants with Section 8 vouchers at the time. Based on the above, the Director finds—for purposes of this disposition only—that Respondents caused to be published an advertisement that expressed “discrimination as to . . . source of lawful income used for rental or mortgage payments,” in violation of N.J.S.A. 10:5-12(g)(3), and declined to rent an apartment to Complainant because she relied on the federal housing assistance program to pay rent, in violation of N.J.S.A. 10:5-12(g)(1). Thus, the Director is satisfied at this preliminary stage of the process that the circumstances of this case support a “reasonable ground of suspicion . . . to warrant a cautious person in the belief” that probable cause exists to support the allegations of housing discrimination. N.J.A.C. 13:4-10.2.

DATE:

12-16-15



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS