

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HD12QW-63575

Margarita Colon,)
)
Complainant,)
)
v.)
)
Barclay Towers Condominium)
Association, and Jenlung Chen,)
)
Respondents.)

Administrative Action

FINDING OF PROBABLE CAUSE

This is a housing discrimination case. Camden County resident Margarita Colon (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that on or about December 15, 2012, Jenlung Chen (Chen) and the Barclay Towers Condominium Association (Barclay Towers) refused to rent a two-bedroom condominium unit to her after learning that she intended to rely on a government-issued housing voucher, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. Respondents denied the allegations of discrimination in their entirety. DCR's ensuing investigation found as follows.

Findings of the Investigation

Barclay Towers is a high rise building located in Cherry Hill that consists of 169 condominium units and eight commercial units. Chen is a resident of Middlesex County who owns condominium unit 907 in Barclay Towers, which he utilizes as a rental property. The condominium in Barclay Towers is the only rental property that Chen owns.

On December 10, 2012, Chen advertised the unit for rent on Craigslist.org for \$1,300 per month. The advertisement provided contact information for his wife, Vicky Chang.

Complainant told DCR that she saw the advertisement on Craigslist and expressed interest to her realtor, Linda Joseph, from Prudential Fox & Roach Realtors. Complainant saw the unit on December 12, 2012, while she was at Barclay Towers with Joseph viewing another available unit. Complainant told DCR that Barclay Towers property manager, John Ross, gave her and Joseph access to Chen's unit.

Later that day, Complainant sent an email to Chang that stated: "Hi. I am very interested in this listing and am looking for immediate occupancy. Please let me know if it is still available. Regards, Rita."

The next day Chang responded in part: "Attached please find the application form. You can either reply in an email and attach a copy of your pay stub or fax everything to me at . . . (please call me before you fax so I can hook up the machine). Thanks!"

On December 14, 2012, Complainant faxed a note to Chang indicating that she planned to rely on a Section 8 voucher to pay a significant portion of her rent.¹ She wrote in part:

¹ 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 to enable them to 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

Enclosed is the application you sent me over last night as well as two pay stubs and the request for tenancy through HUD. I am giving you the phone number to my worker in the event that you have any questions regarding filling out the form or the program itself. Her name is Ms. Green and her phone number . . . Please let me know as soon as possible if you are going to be willing to rent to me so that if not I can continue my search for other units. Thank you again in advance.

On December 15, 2012, Chang sent an email to Complainant that stated in pertinent part:

Hi Rita,

Sorry for my late response. I finally got to talk to my in-laws. They said the management office of Barclay Towers doesn't recommend having tenants on Section 8...sorry about this... Best wishes,

Vicky [ellipses in original]

In Chen's answer to the verified complaint, he wrote in part:

Upon further phone conversations with Ms. Colon, we learned that she will be using Section 8 Voucher as source of income to pay for the rent. Having no experience with Section 8 Voucher, we did some research on our own and found that it takes 10-15 days to finalize the whole application. My wife Vicky was the main person taking care of this, and she was 9.5 months pregnant with our third child (our son was born on 12/16/2012, four days after she spoke to Ms. Colon). She knew she was about to deliver anytime now, and would not have time to take care of the paperwork and handle the back-and-forth communication. And Ms. Colon wanted to move in as soon as possible, which means she would have to start the application process with the housing program right away. So even though we actually like the fact that the Section 8 Voucher guarantees payment of almost all the rental amount (we were told by Ms. Colon that \$1150 of the \$1300 will be guaranteed by the Section 8 Voucher), we decided that the extra work involved working with this program doesn't really fit our situation at that time because of my third son's birth and the busy life with three kids under three.

funds enters into a separate Housing Assistance Payment contract with the owner, pursuant to which the agency agrees to pay the balance of the fair market rent as established by HUD. Ibid.

* * *

Lastly, since we had never met Ms. Colon, we called John from the management office for a second opinion. He did tell us that they do not recommend Section 8 program but also stated that it was our decision. We eventually decided not to rent to Ms. Colon not just because of what the management office said, but also because of the reasons explained above-specifically the realtor fee [2] and the extra time and paperwork required working with this housing program...

Vicky Chang told DCR that she spoke with John Ross on the telephone about the applicant, and was told by Ross that renting to someone with a Section 8 voucher was not recommended.

Barclay Towers denied the allegations in their entirety. In its answer to the verified complaint, it wrote in part:

All unit owners own their units subject to the restrictions contained in the Master Deed and By-Laws, as well as the Rules and Regulations of the Association adopted pursuant to the New Jersey Condominium Act and the governing documents. A unit owner such as the Respondent Jenlung Chen, may rent their unit. The Barclay Towers Condominium Association does not limit to whom a unit owner can rent to and does not involve itself into the selection of tenants. The only mention of Section 8 in any of the Association's documents is the Association's policy requiring that a unit owner incorporate a tenancy addendum which was prepared by the United States Department of Housing and Urban Development to be used in the Section 8 Tenant-Based Assistance Housing Choice Voucher Program.

. . . The Barclay Towers Condominium Association has no relationship, contractual or otherwise, with the complainant and has no knowledge regarding why, or even if, she was denied tenancy in the subject unit. The Barclay Towers Condominium Association does not have the right of first refusal, does not approve tenancies and has no control over who is the tenant.

. . . Furthermore Barclay Towers Condominium Association denies telling anyone that the Respondent not rent to potential tenants receiving Section 8 rent subsidies.

² The investigation found that Complainant's real estate agent was seeking a finder's fee from Chen.

During a site visit to Barclay Towers, DCR interviewed Ross, who was the acting property manager for Barclay Towers when Complainant saw Chen's apartment. Ross has an office on the first floor near the lobby and elevator. Ross recalled Complainant coming into his office and asking to see the subject unit. He told DCR that he gave Complainant keys to view Chen's apartment. Ross explained that he has keys to all of the units in Barclay Towers in case an emergency arises. Ross told DCR that Complainant asked him if Section 8 was accepted, and he replied that she would have to ask the unit owner. Ross said he remembered a woman whom he believed to be the owners' daughter calling and asking what he thought about renting to someone with Section 8. Ross said that he advised the caller that he was not involved in the decision, and instructed them make the decision themselves.

Analysis

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., 498 U.S. 1073 (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.

The LAD makes it unlawful for “any person” to refuse to rent property to a prospective tenant because of a “source of lawful income” used for rent payments. See N.J.S.A. 10:5-12(g)(1). It necessarily follows that a landlord may not reject a prospective tenant because the tenant proposes to use a Section 8 voucher to assist in paying rent. See Franklin Tower One, LLC v. N.M., 157 N.J. 602, 618-23 (1999).

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.

Here, Chen acknowledged in his answer that he decided to not rent the unit to Complainant because she was using a Section 8 voucher. Chen stated that although he “like[d] the fact that the Section 8 Voucher guarantees payment of almost all the rental amount,” it would be too much paperwork for his wife to complete at that time because she was about to have a baby and Complainant wanted to begin renting the apartment immediately. Chen also claimed that he was influenced by the advice of Barclay Tower’s building manager to not rent to tenants who use Section 8 vouchers. Based on this evidence, the Director finds that there is probable cause to credit the allegations in the complaint against Chen.

The LAD also makes it unlawful “[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts

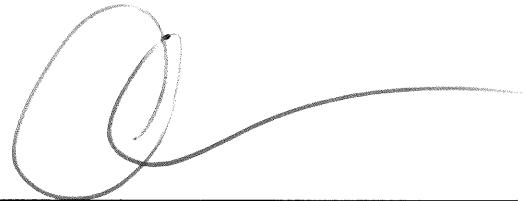
forbidden [under the LAD], or to attempt to do so.” N.J.S.A. 10:5-12(e).

In this case, Chang wrote in her email to Complainant that Barclay Towers did not recommend renting to tenants with Section 8 vouchers. Presumably, at the time she saw nothing wrong with the practice and would have no compelling motivation to fabricate an explanation out of whole cloth. In Chen’s answer to the verified complaint, he reiterated that one of the reasons he rejected Complainant’s request for tenancy was Ross’s recommendation to disfavor tenants who use Section 8 vouchers. Given that Chen appears to be an unsophisticated landlord, it is reasonable to believe that he would rely on the advice from a Barclay Tower’s employee whom he perceived as possessing more experience with the issue. Chen does not claim that he relied solely on Ross’s advice, but suggests that it was considered and a partial factor in his determination. In view of the above, for purposes of this disposition only, the Director finds that the evidence supports a “reasonable ground of suspicion” that Ross made the recommendation which, although non-binding, contributed to Chen’s decision to reject the tenant based on the Section 8 voucher. Accordingly, it is found that probable cause exists to support Complainant’s allegations of housing discrimination against Barclay Tower.

Should this matter not be resolved during the required conciliation process, N.J.S.A. 10:5-14, the matter will proceed to the Office of Administrative Law for an evidentiary hearing. N.J.A.C. 13:4-11.1(b). There, the parties will have an opportunity to present evidence regarding their respective versions of events. At that hearing, an Administrative Law Judge will hear live testimony and evaluate the credibility of the witnesses. Clowes v. Terminix Int’l, Inc., 109 N.J. 575, 587 (1988). At this threshold

stage of the process, however, the Director is satisfied that the circumstances of this case support a reasonable ground of suspicion to warrant a cautious person in the belief that the matter should “proceed to the next step on the road to an adjudication on the merits.” Frank, supra, 228 N.J. Super. at 56.

DATE: 3-28-17

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line extending to the right.

Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS