

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DOCKET NO. HB57WT-64894
HUD FILE NO. 02-14-0725-8

Jennifer Bullard,)	
)	
Complainant,)	<u>Administrative Action</u>
)	
v.)	AMENDED FINDING OF PROBABLE CAUSE
)	
A&C DeFeo and Apartment)	
Seekers & Home Sales Real Estate,)	
)	
Respondents.)	

On October 3, 2014, Jennifer Bullard (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that A&C DeFeo and Apartment Seekers & Home Sales Real Estate (Respondents) refused to rent an apartment to her because of her race and 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. Respondents denied the allegations of discrimination in their entirety. DCR now finds—for purposes of this disposition only—as follows.

On or about August 1, 2014, Complainant drove past a two-family home located at 164 Westervelt Place, Lodi, Bergen County, and saw a "For Rent" sign in the window. On or about August 2, 2014, she called the posted telephone number, which belongs to Apartment Seekers & Home Sales Real Estate, a licensed real estate agency with an office in Garfield, Bergen County. She spoke with real estate agent Richard Sommese.

That day, Sommese showed her the apartment. She told him that she wanted to rent it and that she had a Section 8 rent subsidy that would pay a significant portion of the monthly rent as well as income from Social Security. Sommese replied that he would speak to the property owners and get back to her.

The listed property owner is A&C DeFeo. The investigation found that Kenneth DeFeo and his sister-in-law Paula DeFeo hold themselves out as possessing ownership interests in the property and for being primarily responsible for its control and management. Paula told DCR that she manages the bills for the property and that she and her brother-in-law, Kenneth, are estranged. Kenneth's sister, Darlene, appears to also hold an ownership interest in the property.

Darlene's son, Daniel, lives at the property in the first floor unit and performs maintenance at the home. There was no indication that Daniel held any ownership interest in the property.

A few days after Complainant met Sommese, she called him to ask whether he had spoken to the owners. She told DCR that Sommese said he was having trouble reaching the owners, that ownership of the property was in question, and that there was ongoing litigation between the owners.

Approximately a week later, after not having heard anything further, Complainant, who is African-American asked a friend, E.D., who is Caucasian, to call Sommese and ask about the availability of the apartment. E.D. did so and was told by Sommese that the apartment was still available. Complainant said that approximately one week later, she noticed that the "For Rent" sign was gone and assumed that the apartment was no longer available.

Sommese told DCR that the DeFeos found tenants—Katia Viviana Sotelo and Jose Fernando Urquijo—on their own, and he did not receive a commission.

Daniel stated that Sotelo and Urquijo saw the "For Rent" sign and knocked on his door and asked about the rental.

Paula told DCR that in August 2014, Daniel called her to say he found tenants for the apartment. Paula said she met Sotelo and Urquijo at the property on August 27, 2014, and they signed a lease agreement with a move-in date of September 1, 2014. She said that after about four months, they abruptly vacated the apartment when they lost their jobs. Paula stated that

she did not have a forwarding address or other contact information for them. The DeFeos did not respond to DCR's repeated requests for information regarding the races of their tenants. DCR reviewed a copy of the lease agreement. There was no indication that the agreement included acceptance of Section 8 or other rental assistance payments.

Sommese told DCR that when Complainant told him she wanted to rent the apartment, he called Kenneth in Florida who, in turn, told him to call Paula or Daniel. Sommese said he called Paula, who told him to contact Daniel. Sommese said that he did so, and arranged for Daniel to meet Complainant on either August 10 or 17, 2014—he could not recall the precise date or time. Sommese said that when he told Complainant about the appointment, she replied that she could not appear because she would be attending a family reunion on that date.

Sommese told DCR that he had no notes memorializing the appointment or any record of the dates and times of his phone calls to the DeFeos regarding Complainant.

Kenneth acknowledged receiving a telephone call from Sommese about a prospective tenant with a Section 8 rent subsidy. Kenneth said that he told Sommese to contact Daniel about the prospective tenant.

Paula and Daniel denied ever speaking to Sommese about Complainant's prospective tenancy.

Complainant denied ever speaking to Sommese about an appointment to meet with Daniel. She denied having a family reunion scheduled for either August 10 or 17, 2014.

Analysis

The LAD is designed to root out the “cancer of discrimination.” Hernandez v. Region Nine Housing Corgi, 146 N.J. 645, 651-52 (1996). The LAD recognizes that “discrimination threatens not only the rights and proper privileges of the inhabitants of the State but menaces the institutions and functions of a free democratic State.” N.J.S.A. 10:5-3; see also L.W. v. Toms River, 189 N.J. 381, 399 (2007) (noting “[f]reedom from discrimination is one of the fundamental principles of our society”). Because of its remedial purpose, courts have adhered

to the Legislative mandate that the LAD be “liberally construed,” N.J.S.A. 10:5-3, by consistently interpreting the LAD “with that high degree of liberality which comports with the preeminent social significance of its purposes and objects.” Andersen v. Exxon Co., N.J. 89 483 (1982); Zive v. Stanley Roberts, Inc., 182 N.J. 436, 446 (2005).

The LAD makes it illegal to refuse to rent or otherwise discriminate in the terms, conditions, or privileges of a sale or rental of real property, or in the furnishing of facilities or services in connection therewith, based on “source of lawful income used for rental . . . payments,” or race. N.J.S.A. 10:5-4.1; N.J.S.A. 10:5-12(g).

The DCR was created to administer and enforce the State's anti-discrimination laws, N.J.S.A. 10:5-6, and its Director is charged with the responsibility to determine whether there is “probable cause” that a violation of the LAD has occurred. 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.

Here, there is no dispute that on August 2, 2014, when Complainant told Sommese that she wanted to rent the apartment, Sommese was aware of her race and aware that she intended to rely on a Section 8 rent subsidy voucher and Social Security benefits to help pay her rent. There is no dispute that Sommese was acting as an agent for Respondent A&C DeFeo and Respondent Apartment and Seekers & Home Sales Real Estate.

The parties dispute whether Sommese conveyed Complainant's interest to Paula. However, Kenneth, who appears to have an ownership interest of the property, acknowledged speaking to Sommese regarding Complainant, and being informed that she had a rent subsidy. Kenneth did not offer an explanation as to why Complainant was not offered the apartment.

Likewise, Sommese offered no reason why Complainant was not offered the apartment, other than stating that Complainant declined to meet face-to-face with Daniel on either August 10 or 17, 2014—he could not recall which date. Sommese was unable to produce any witnesses or written evidence to corroborate that claim. Daniel and Complainant denied any knowledge of any such scheduled meeting.

But even if Complainant could not meet Daniel on the proposed date because of a family reunion, as Sommese claims, there is no explanation why an alternate date could not be agreed upon. There is no dispute that she still wanted the apartment. There is no dispute that it was still available. Sotelo and Urquijo did not meet with Paula until August 27, 2014, i.e., ten or seventeen days (depending on whether the correct date was August 10 or 17) after the alleged cancelled meeting between Complainant and Daniel. Nor did Sommese explain why missing a meeting with Daniel—who did not manage or own the property—would prove fatal in her attempt to rent the apartment.

A&C DeFeo and Apartment Seekers and Home Sales Real Estate are obligated to carry out the screenings of prospective tenants in a non-discriminatory manner. It appears that A&C DeFeo was directly involved in screening prospective tenants since Paula leased the apartment without assistance from Sommese several weeks after Complainant expressed interest.

Respondents could be reasonably expected to produce any information regarding the races of Sotelo, Urquijo, and any other tenants and/or whether they relied on rent subsidies because such information could directly rebut allegations that Respondents screened out tenants based on race and/or lawful source of income. Their failure to do so, despite repeated requests, allows the Director to draw an adverse inference that Sotelo, Urquijo, and the

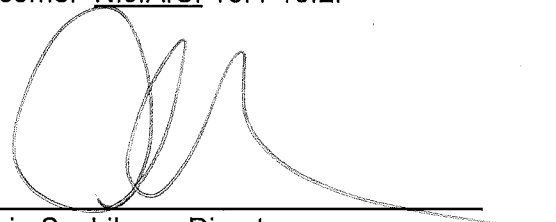
property's other tenants were not African-American, and did not rely on rent subsidies to pay the rent. Cf. Scanlon v. General Motors, 65 N.J. 582 (1974) (citing McCormick, Evidence (2d ed. 1972) § 272, p. 656).

In view of the above, the Director is satisfied that Complainant has established a prima facie showing of discrimination in violation of the statute: (1) she is in the class of persons the LAD is intended to protect; (2) Respondents, through Sommese and Kenneth DeFeo, were aware that Complainant is a member of the protected class or classes; (3) Complainant was ready and able to accept Respondents' offer to rent or lease; and (4) Respondents refused to rent an apartment to plaintiff.

Respondents have not articulated a legitimate, nondiscriminatory business reason for denying Complainant's application. And in the absence of any such non-discriminatory explanation, there is no basis upon which to refute her allegations that she was excluded on the basis of race and/or source of lawful income.

Based on the above, 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 based on race and/or source of lawful income. N.J.A.C. 13:4-10.2.

DATE: 12-7-15



Craig Sashihara, Director
NJ DIVISION ON CIVIL RIGHTS