

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HG13WW-66684
HUD No. 02-18-9005-8

Barbara Freeman,)
)
Complainant,)
)
v.)
)
Montclarion at Bay Station & Piazza &)
Associates, Inc.)
)
Respondents.)

Administrative Action

FINDING OF PROBABLE CAUSE

This is a housing discrimination case. On October 01, 2017, Essex County resident Barbara Freeman (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Montclarion at Bay Station (Montclarion) and Piazza & Associates, Inc. (Piazza) refused to rent her an available apartment because of her race (Black) and because she has a Section 8 rent subsidy, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of Investigation

Montclarion at Bay Station is a 40 unit apartment building in Montclair. The Monclarion has one and two bedroom apartments which range from \$2,250 to \$4,850 per month. Two of the 40 units are set aside as affordable units renting at \$750 per month. There is retail space on the first floor. The Montclarion began “leasing up” in March 2017.

Piazza & Associates administers affordable housing programs in communities throughout New Jersey, including Montclair. Piazza receives completed applications, maintains waiting lists and determines whether applicants are qualified to be eligible for affordable housing based upon their incomes. Piazza forwards the applications to the housing providers, including Montclarion, which have available affordable units. The housing provider then decides whether to rent to the applicant.

Complainant has a Section 8 voucher which pays a significant portion of her monthly rent. Complainant was seeking a two bedroom apartment for herself and her adult nephew.

On or about October 24, 2011, Complainant submitted to Piazza a preliminary application for affordable housing in Montclair. On January 24, 2012, Piazza sent Complainant a letter advising her that she had been added to the waiting list and would be contacted when an affordable unit became available for her.

On June 27, 2017, Piazza sent Complainant a letter advising her that an affordable unit was available at the Montclarion. Included in the letter was a final application for Complainant to complete. Complainant's application and financial documents showed that she had income of \$1,288 per month from Social Security and a Section 8 voucher which would pay a significant portion of her monthly rent. Complainant's household, which included her adult nephew who had no income, met the qualifications for affordable housing and their application was forwarded to Montclarion.

The investigation showed that on July 25, 2017, Respondents sent Complainant a form letter stating that she had withdrawn from the application process or was not willing to go through the credit process ("You are no longer interested in this affordable housing at this time or you wouldn't like to go through the credit process" – letter to Complainant from Piazza & Associates 7/25/17). On July 31, 2017, following contact from the Montclair Director of Planning and Community Development, stating that Complainant contacted the Township and was upset that she had been denied an apartment at the Montclarion, Montclarion referred Complainant's application to On-Site, the online leasing platform it utilizes. The next day, On-Site sent Complainant a "NOTICE OF ADVERSE ACTION" which advised Complainant that her application was rejected based on her "rental score."

During the investigation, Montclarion told DCR that Complainant had a score of 1 on a scale of 0 to 10 with 0 being the lowest and 10 being the highest. Montclarion told DCR the key factors which affected Complainant's rental score were a 2015 eviction action, past due accounts or loans, and unpaid accounts in collection.

Montclarion gave DCR copies of Complainant's application and credit reports for her and her nephew. Complainant's report showed a March 2015 civil action for possession (LT-009197-15). The report also showed more than \$15,000 in past due student loans and a \$352 medical bill in collection. Complainant's nephew, who was over 21 and had to be screened, had no income or credit history.

Montclarion rented the subject two bedroom affordable unit to [REDACTED], [REDACTED] on August 24, 2017. Documentation showed that [REDACTED] was approved by On-Site as a co-signor for the apartment. These tenants did not have a Section 8 voucher or other government rental assistance, and are identified on Montclarion's records as Hispanic/Latino.

During the investigation, Montclarion's "Rent Roll" showed that 36 of the 40 units were occupied. Five of leaseholders were Black, two were Hispanic, and five were Asian.

Complainant told DCR her landlord filed a complaint in court against her because she made complaints about her neighbors. Complainant said she and her landlord reached an agreement and gave DCR a copy of a letter from her landlord dated August 18, 2017, which said her rent payment history was excellent. Complainant also told DCR that she worked out a payment plan for her student loans. Complainant also told DCR the medical bill was in collection because the company did not submit the bill to her insurance provider. Complainant was never permitted to provide any of this information to Montclarion, either through On-Site or otherwise.

Analysis

At the conclusion of an investigation, DCR is required to determine whether probable cause exists to credit a complainant's allegations of the verified complaint. See N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] was violated." Ibid. If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. See N.J.A.C. 13:4-11.1(b). A DCR finding that probable cause exists is not an adjudication on the merits. If DCR finds that there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. See N.J.A.C. 13:4-10(e).

The LAD makes it unlawful for "any person" to discriminate against or refuse to rent real property to a prospective tenant because of race or a lawful source of income to be used for rent payments. See N.J.S.A. 10:5-12(g). "Lawful source of income" includes a housing voucher provided by a state or federal agency. See Franklin Tower One, LLC v. N.M., 157 N.J. 602, 618-23 (1999) (holding that landlord may not deny a prospective tenant housing solely because tenant proposed to use Section 8 voucher).

While Respondents are permitted to evaluate the creditworthiness of Section 8 voucher holders, the manner in which Complainant was passed over, despite her ability to offer payment for the credit check and refute at least one of the factors given for the credit determination (past eviction action unrelated to nonpayment of rent and resolved favorably with landlord) creates a reasonable suspicion that factors other than creditworthiness may have contributed to Respondents' denial. Further, there was indication that Complainant was initially refused on July 31, 2017 or earlier, prior to the credit and rental history check being completed on August 1, 2017, and that the reasons Respondents gave to Complainant for their initial refusal were based on incorrect information, namely that Complainant had withdrawn her application and declined to go through the credit check process. Complainant denies that she communicated disinterest, withdrew her application, or refused a credit check. Corroborative of the denial, Respondents' July 25, 2017 letter to Complainant appeared to be a form letter that gave alternative, possible reasons for withdrawal rather than a reason certain ("You are no longer interested in this affordable housing at this time or you wouldn't like to go through the credit process" – letter to Complainant from Piazza & Associates 7/25/17).

Additional factors that weigh in favor of a hearing include DCR's finding that at the time Respondents ordered Complainant's credit and rental history report, Respondents were already in the process of securing another tenant for the available apartment. When Complainant's credit and rental history report was returned, it appears undisputed that she was denied an opportunity to address the information with Respondents or provide supplemental information related to her credit history and ability to pay her portion of the rent. For example, Complainant asserts that she offered Respondents a letter from her former landlord attesting that the eviction action reported was unrelated to payment of rent, but Respondents would not accept the information. The investigation revealed that Respondents did not accept any information from Complainant addressing the credit check results, nor was Respondents' refusal based on Complainant's current ability to pay her portion of the rent after the Section 8 subsidy was applied.

In general, the manner in which Respondents handled Complainant's application raised questions as to whether Complainant was permitted a reasonable opportunity to demonstrate that she met Respondents' non-discriminatory tenant-selection criteria for the apartment. Finally, Respondents' reliance on a rental score provided by a third party does not shield their screening decisions from scrutiny, nor does use of an outside party's measurement relieve Respondents from the obligation to ensure that their application process is nondiscriminatory.

The questions DCR's investigation raised about Respondents' rejection of Complainant are a sufficient basis to permit the action to continue to an evidentiary hearing on the issues of whether race or source of income played a role in the rejection. At hearing, the parties will have an opportunity to present further evidence regarding their respective versions of events. At this preliminary stage of the process, the Director finds 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 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.

DATE: January 7, 2019



Rachel Wainer Apter, Director
NJ DIVISION ON CIVIL RIGHTS

