

STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. HB44QL-63743

Fair Housing Council of Northern)
New Jersey & Lee Porter,)
)
Complainants,)
)
v.)
)
Manwon Chun & Young-Sook)
)
Respondents.)

Administrative Action

FINDING OF PROBABLE CAUSE

This is a housing discrimination case. On March 27, 2013, the Fair Housing Council of Northern New Jersey (FHCNNJ) and its Director, Lee Porter, filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that Respondents engaged in a practice of discriminating against applicants based upon source of lawful income used for rent payments in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. DCR's ensuing investigation found as follows.

Summary of Investigation

FHCNNJ is a private, nonprofit organization located in Hackensack that receives funding from the U.S. Department of Housing and Urban Development's (HUD) Fair Housing Initiatives Program (FHIP). FHCNNJ uses part of its FHIP grant to conduct fair housing tests at apartment

complexes and rental offices throughout northern New Jersey. Ms. Porter is FHCNNJ's Executive Director.

Respondents own and operate a 16 unit apartment building in Teaneck.

FHCNNJ told DCR that on November 21, 2012, a Bergen County resident, T.P., called its office and reported an alleged act of discrimination that occurred on August 7, 2012.¹ FHCNNJ's senior housing counselor prepared a report stating:

[T.P.] called the Craigslist ad on 8/07/12. She asked if the apartment was available and the owner said yes. She confirmed it was a 1 bedroom apartment. She asked for the rent price and recalled him saying \$1000 something (the owner had a definite answer, but the client could not remember the actual number). He then asked her if she could come by and visit. She explained that she was busy with school and they would need to work something out. She then asked if he accepted TRA [Temporary Rental Assistance]. He answered no he used to accept TRA, but not anymore. He explained that he had a tenant who had a TRA voucher, but it was only for 6 months. The client tried to explain that hers was for a year, but the man would not budge on his decision.

DCR conducted an intake interview of T.P. in which she verified the contents of the above statement that she gave to FHCNNJ. In addition, she stated the man with whom she spoke identified himself as Manwon Chun.

On August 8, 2012, FHCNNJ had a tester call the telephone number from the advertisement posing as a prospective applicant with TRA. The tester's report stated in part:

On 08/08/2012 at 3:28 PM, I placed a call to 201-803-7664. My call was answered by a man who later identified himself as Mr. Chun. After the man said hello, I stated that my name was [XXX] and that I was calling about the apartment advertised on Craigslist. I stated

¹ FHCNNJ first contacted The New Jersey Division on Civil Rights (DCR) about this matter on November 21, 2012, requesting that DCR speak with T.P. about filing a verified complaint. DCR conducted an intake interview of Complainant on March 13, 2013. Thereafter, Complainant refused to reply to DCR's contacts. On March 27, 2013, FHCNNJ filed a verified complaint in this matter in accordance with N.J.A.C. 13:4-2.2(c). Because DCR was responsible for the delay between November 21, 2012 and March 13, 2013, and there was no prejudice to Respondent, the statute of limitations was tolled during that period. See Decker v. Board of Education of Elizabeth, 153 N.J. Super. 470, 473 (App. Div. 1977), certif. denied, 75 N.J. 612 (1978) (holding that a complainant's substantive rights should not be denied based on an administrative agency's error).

that I was calling about the apartment at 194 Fort Lee Road in Teaneck. I asked if the apartment was still available. He said that it was. I confirmed that the apartment was on the third floor and that the rent was \$1050. He stated that it was. I asked if I would need an appointment to see the apartment. He said that I could meet him there at 5 PM tonight. I said that before I come over there, I would like to know if he would accept TRA, Temporary Rental Assistance. He then said that he would not take TRA but would consider Section 8. I said that they are similar and that TRA is like Section 8. He asked me where I lived, I said Hackensack. He then asked if I already had the TRA. I said that I was approved and that I would have it once I completed the paperwork and had a lease. He then said that he already had a few people and that he would not take TRA. He then repeated that he would consider Section 8 and asked me how long the TRA was good for. I said it would be for 1 year. He then said he would not take TRA because it was temporary and there was no guarantee that it would be renewed...

During the investigation, Respondents submitted documentation demonstrating that – at the time FHCNNJ filed the instant complaint – they had one tenant with TRA living in their building. Correspondence between Respondents and the Bergen County Board of Social Services showed that the rental assistance was granted for periods of either three or six months. Respondent pointed out that it also rents to six other tenants who receive rent subsidies.

In addition, Chun – who wrote Respondent’s answer – claimed that he never spoke with anyone named T.P. He also argued that T.P.’s statements to DCR and FHCNNJ mention that she contacted a housing provider about an advertisement to rent one room in a two family house, which is something Respondent does not rent. With regard to FHCNNJ, he alleged that the phone number that FHCNNJ’s tester listed for Respondent was not Respondents’ phone number. Based on these inconsistencies, Chun argued that both T.P. and FHCNNJ mistook Respondent for another housing provider.

The investigation did not substantiate Chun’s claim that T.P. was responding to an advertisement to rent one room in a two family home. In addition, FHCNNJ submitted a copy of the Craig’s List advertisement to which T.P. and its tester responded; the advertisement states the correct address for Respondent’s rental property and lists the phone number as (201) 803-7664, the same number that FHCNNJ’s tester claims to have called in his or her memo regarding the test call.

FHCNNJ claims that the discriminatory practices have caused it to suffer diversion of resources and frustrated its mission, which is to ensure that all protected class members are

provided equal housing opportunities without regard to race, color, national origin, religion, sex, familial status, disability or source of lawful income.

Analysis

At the conclusion of an investigation, the DCR 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 Director 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. 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 discriminate against or refuse to rent real property to a prospective tenant because of the source of lawful income to be used for rent or mortgage payments. N.J.S.A. 10:5-12(g). “Source of lawful 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 a landlord may not deny a prospective tenant housing solely because tenant proposed to use Section 8 voucher). Further, any statement, advertisement, publication, or inquiry made in connection with the rental or sale of real property and expressing a limitation, specification, or discrimination as to source of lawful income constitutes a separate violation of the LAD. N.J.S.A. 10:5-12(g)(3).

Complainant, a tester from a neutral party, alleges that Respondent’s refusal to rent an apartment to T.P. because she asked to use Temporary Rental Assistance was a violation of the LAD. It also claims that Chun’s verbal statements to both T.P. and Complainant’s tester that he would not accept TRA constitute a separate violation of the LAD.

Respondent asserts that it never refused to rent an apartment to a prospective tenant because that tenant requested to use TRA. It contends that it never spoke with T.P. or Complainant’s tester. Respondent also points out that it rents to six tenants who receive rent subsidies, including one tenant who had TRA.

The investigation did not substantiate Respondent’s claims that T.P. was responding to an advertisement to rent one room in a two family home. In addition, FHCNNJ submitted a copy of the Craig’s List advertisement to which T.P. and its tester responded; the advertisement states the correct address for Respondent’s rental property and lists the phone number as (201) 803-7664, the same number that FHCNNJ’s tester claims to have called in his or her memo regarding the test call.

There is at least a sufficient basis to permit the action to continue to an evidentiary hearing. At the 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, supra, 228 N.J. Super. at 56.

A handwritten signature in blue ink that reads "Rachel Wainer Apter". The signature is written in a cursive style with a long, sweeping tail on the letter 't'.

Rachel Wainer Apter, Director
NJ DIVISION ON CIVIL RIGHTS

DATE: March 28, 2019