

STATE OF NEW JERSEY  
OFFICE OF THE ATTORNEY GENERAL  
DEPARTMENT OF LAW PUBLIC SAFETY  
DIVISION ON CIVIL RIGHTS  
DCR DOCKET NO. HT08QO-66865

Carla Mitchell,	)	
	)	<u>Administrative Action</u>
Complainant,	)	
	)	<b>FINDING OF PROBABLE CAUSE</b>
v.	)	
	)	
Nirav M. Patel,	)	
	)	
Respondent.	)	

This is a housing discrimination case. On February 12, 2018, New Jersey resident Carla Mitchell (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that on or about January 25, 2018, Virginia resident and New Jersey homeowner, Nirav M. Patel (Respondent), refused to rent to her because she had a Section 8 housing voucher 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**

Respondent owns a single family home located at 46 9<sup>th</sup> Street in Somerset. Respondent resided there with his family until they relocated to Virginia in December 2016. On or about January 22, 2018, Respondent listed the home for rent on the website Zillow.com for \$2,000 per month.

Complainant has a Section 8 voucher which pays a significant portion of her monthly rent. On or about January 23, 2018, Complainant responded to the advertisement and Respondent’s sister gave her a tour of the home. On that date, Complainant sent Respondent an email explaining that she was “very interested in renting th[e] house.” Later that day, Respondent sent Complainant an email thanking her for her interest and asking her questions, including when she planned to move in, whether the person on the lease was employed, and how many adults and children would be living in the house.”<sup>1</sup> Complainant responded immediately. The next day, Respondent sent Complainant an email noting that he would “send you some paperwork to get started with process.”

Later that same day, Complainant sent Respondent an email asking if he accepted Section 8. Respondent responded that he did not: “Sorry for the delay. I was informed about the [Section

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<sup>1</sup> The LAD prohibits discrimination in housing based on familial status, N.J.S.A. 10:5-12(g). “Familial status” is defined to include being the parent of child under the age of 18 years (N.J.S.A. 10:5-5.51l). To the extent that Respondent made an inquiry in connection with a potential rental concerning Complainant’s familial status, such inquiry may have violated N.J.S.A. 10:5-12(g)(3).

8] program and read your email. Unfortunately, listed property is not a participant of the [Section 8] program.”

Complainant gave DCR a copy of the Zillow.com advertisement for the home, which she downloaded on January 30, 2018. The statement, “NOT participating in Section 8 Program” had been added to the property description.

On February 16, 2018, Respondent entered into a lease agreement with an applicant who did not have a rent subsidy.

In the Answer to the complaint, Respondent’s attorney stated in part:

Respondent is not a sophisticated landlord. In fact, Respondent never rented out the Property, or any other property, prior to renting out the subject Property in March 2018. Respondent did not engage the services of a real estate agency or attorney and was not versed in the laws of New Jersey as they relate to landlord’s responsibilities.... Respondent in no way intended to discriminate against Complainant, it was simply Respondent’s belief that Complainant was looking for a property that participated in a program that Respondent’s property was not registered to participate in....

### **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(a). 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.” N.J.A.C. 13:4-10.2(b). 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). 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. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial “culling-out process” in which 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 source of lawful income to be used for rent or mortgage payments. See N.J.S.A. 10:5-12(g). “Source of lawful income” includes a housing voucher provided by a state or federal agency, including a Section 8 housing voucher. Pasquince v.

Brighton Arms Apartments, 378 N.J. Super. 588, 593 (App. Div. 2005); see also 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). It is also a separate violation of the LAD for the owner of any real property to display any rental advertisement which expresses any limitation as to source of lawful income used for rental payment—i.e., to display any advertisement that says “Does not accept Section 8.” N.J.S.A. 10:5-12(g)(3). “[T]he production of any such advertisement ... shall be presumptive evidence in any action that the same was authorized by such person.” Ibid.

The LAD covers many types of property—Respondent’s single-family home is not among the law’s exceptions. Here, Complainant applied to rent Respondent’s property when she told him she was “very interested in renting this house.”

Respondent initially told her that he would “send you some paperwork to get started with [the] process” but then did not send the paperwork, explaining that the “listed property is not a participant of the [Section 8] program.” Complainant suffered an adverse action when she was not permitted to rent the house. And Respondent’s email response is direct evidence of discrimination—indicating that he would not rent her the desired apartment because she proposed to pay with a Section 8 housing voucher. Respondent thereafter leased the house to another applicant who did not have a rent subsidy.

After refusing to rent to Complainant, Respondent revised his online rental listing to state: “NOT participating in Section 8 Program.” The advertisement violates the LAD’s prohibition against advertisements or postings that express a limitation as to the source of lawful income to be used for rental payments. See N.J.S.A. 10:5-12(g)(3).<sup>2</sup>

Respondent did not appear to refute the allegations, but tried to explain that he was “not versed in the laws of New Jersey as they relate to landlord’s responsibilities.” There is nonetheless 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.” See N.J.A.C. 13:4-10.2. Therefore, a FINDING OF PROBABLE CAUSE exists to credit Complainant’s allegations and the case will proceed to a hearing on the merits.



Rachel Winer Apter, Director

DATE: March 18, 2019

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<sup>2</sup> To the extent the verified complaint does not expressly allege a violation of N.J.S.A. 10:5-12(g)(3), the complaint is hereby amended to allege such a violation. See N.J.A.C. 13:4-2.9(c) (permitting amendments to verified complaints for practices that grow out of the subject matter of the original verified complaint).