

Fair Housing Protections for Domestic Violence Survivors



I. WHAT IS THE FAIR HOUSING ACT?

The Fair Housing Act, a landmark piece of civil rights legislation, was first signed into law as Title VIII of the Civil Rights Act of 1968 and later amended by the Fair Housing Amendments Act of 1988. The current statute makes it illegal to discriminate against people on the basis of race, color, religion, sex, familial status, disability, or national origin in the housing and rental market. While a person's status as a survivor of domestic violence is not a protected class, advocates have successfully brought claims against housing providers who have denied a person housing based on her status as a survivor, by tying domestic violence to sex discrimination. This outline will explain how fair housing laws can help ensure housing rights for victims of domestic violence.

a. What Constitutes Discrimination under the Fair Housing Act?

The Fair Housing Act prohibits two types of discrimination against members of a protected class: intentional discrimination and disparate impact. A housing provider intentionally discriminates when it treats people differently explicitly because of their membership in the protected group. Intentional discrimination, in the housing context, may exist in many forms and is often straightforward. Prohibited behavior aimed at a protected class includes: 1) communications that indicate a preference as to a protected group; 2) refusal to rent or provide a housing benefit; 3) discouraging access to the unit or housing benefit; 4) offering different terms in agreements, rules, or policies; and 5) harassing or evicting tenants. The third type of behavior, discouraging

access, may include different treatment in the application process, steering to a certain part of the complex or city, and misrepresentations as to availability of a unit.

Disparate impact discrimination occurs when a policy is neutral on its face, but has a disproportionate impact on a protected group. This form of discrimination will be discussed in more detail in the Domestic Violence and Fair Housing portion of this outline.

b. What Types of Housing Does the FHA Cover?

The FHA covers all dwellings, with a few exceptions. A dwelling includes any place that a person lives, including public housing, homeless shelters, hotels, nursing homes, and more. The FHA excludes owner occupied homes, dwellings with four or fewer units, one of which is owner-occupied, single family homes if the owner does not own more than 3 at one time, certain religious housing, certain housing run by private clubs for their members, and certain housing targeted at senior and disabled populations. Because of the FHA's wide coverage, advocates may find it especially useful where VAWA does not apply, such as in private housing.

c. When Does the FHA Apply?

In addition to covering a broad group of dwellings, the FHA covers many points of the housing relationship and process. These points include advertising, application, screening, occupancy, and eviction/termination.

d. State and Local Fair Housing Law

Advocates should note that state and local fair housing law may provide broader and more comprehensive coverage than the federal fair housing law. Thus, advocates representing survivors should determine if their state or local law does cover domestic violence.

II. DOMESTIC VIOLENCE AND FAIR HOUSING

Domestic violence survivors who do not live in subsidized housing and therefore are not covered by the Violence Against Women Act (VAWA) may still be protected by fair housing laws.

Advocates have used the two theories of fair housing, intentional discrimination and disparate impact, to challenge policies unfair to women who are domestic violence survivors. “[W]omen are five to eight times more likely than men to be victimized by an intimate partner. . .”

a. Intentional Discrimination (Disparate Treatment)

Claims of intentional sex discrimination (also called disparate treatment) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants. This theory has also been used to challenge actions that were taken based on gender-based stereotypes about battered women.

i. Cases

- A. *Robinson v. Cincinnati Hous. Auth.*, 2008 WL 1924255 (S.D. Ohio 2008): Plaintiff requested a transfer to another public housing unit after she was attacked in her home. The PHA denied her request, stating that its policy did not provide for domestic violence transfers. Plaintiff alleged that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, the PHA intentionally discriminated against her on the basis of sex. The court denied her motion for a temporary restraining order and preliminary injunction, and the case is pending.
- B. *Blackwell v. H.A. Housing LP*, 05cv1255 (D. Colo. 2005): Project-based Section 8 complex denied Plaintiff’s request to transfer to

another unit after she was attacked in her apartment by her ex-boyfriend. Plaintiff alleged intentional and disparate impact discrimination on the basis of sex in violation of state and federal fair housing laws. Case settled, with the defendant agreeing to implement a domestic violence policy. Case documents available at www.legalmomentum.org.

C. *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675 (D. Vt. 2005):

Plaintiff was evicted after her husband assaulted her. The landlord stated that plaintiff did not act like a “real” domestic violence victim, and that plaintiff was likely responsible for the violence. Plaintiff alleged that the landlord evicted her because she was a victim of domestic violence, and that this constituted sex discrimination in violation of the Fair Housing Act. The landlord’s motion for summary judgment was denied, and the case settled. Case documents are available at www.aclu.org/fairhousingforwomen.

b. Disparate Impact

Disparate impact theory has been used to challenge policies that have the effect of treating women more harshly. Some cases have challenged “zero tolerance for violence” policies that mandate eviction for entire households when a violent act is committed at the unit. It has been argued that such policies have a disparate impact on women, who constitute the majority of domestic violence victims.

i. Statistics

In order to make a case that the Fair Housing Act protects survivors of domestic violence, one must establish a clear linkage between the domestic violence and membership in a protected class – sex. To establish the linkage, statistical data is crucial. The data must demonstrate that domestic violence is clearly related to the sex of the survivor. The following statistics help demonstrate the relationship between domestic violence and a person's sex, for the purposes of the FHA:

- A. The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, Intimate Partner Violence, 1993-2001 at 1 (Feb. 2003).
- B. Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women. Greenfield, L.A., et al., Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends, U.S. Dept. of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).
- C. Women constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Just. & Ctrs. for Disease Control and Prevention, Stalking in America: Findings from the National Violence Against Women Survey at 2 (April 1998).

ii. Disparate Impact Cases

- A. *Lewis v. N. End Vill. et al.*, 07cv10757 (E.D. Mich. 2008): Plaintiff's ex-boyfriend kicked in door at her apartment, a low-income housing tax credit property. Although Plaintiff had a restraining order, she was evicted for violating the lease, which stated that she was liable for damage resulting from "lack of proper supervision" of her "guests." Plaintiff argued that the policy of interpreting the word "guest" to include those who enter a property in violation of a restraining order had a disparate impact on women. Case settled. Settlement and pleadings are available at www.aclu.org/fairhousingforwomen
- B. *Warren v. Ypsilanti Housing Commission*, 02cv40034 (E.D. Mich. 2002): Plaintiff's ex-boyfriend assaulted her at her public housing unit. The PHA sought to evict the Plaintiff, citing a "one-strike" rule in its lease permitting it to evict a tenant if there was any violence in the tenant's apartment. Plaintiff argued that because the majority of domestic violence victims are women, the policy of evicting victims based on violence against them constituted sex discrimination in violation of state and federal fair housing laws. The case settled, and the PHA agreed to end its application of the one-strike rule to domestic violence victims. For pleadings, see www.aclu.org/fairhousingforwomen
- C. *Alvera v. Creekside Village Apartments*, HUD ALJ No. 10-99-0538-8 (2001) (Oregon): Management company sought to evict a tenant

under a “zero tolerance for violence” policy because her husband had assaulted her. HUD found that policy of evicting innocent victims of domestic violence because of that violence has a disproportionate impact on women, and found reasonable cause to believe that plaintiff had been discriminated against because of her sex. Case documents are available at www.aclu.org/fairhousingforwomen

III. CONCLUSION

For cases where VAWA does not provide protection for the housing rights of survivors, the Fair Housing Act may prohibit discriminatory policies a housing provider has in place.



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**Office of General Counsel Guidance on
Application of Fair Housing Act Standards to the
Enforcement of Local Nuisance and Crime-Free Housing Ordinances Against Victims
of Domestic Violence, Other Crime Victims, and Others Who Require Police or
Emergency Services**

I. Introduction

The Fair Housing Act (or the Act) prohibits discrimination in the sale, rental or financing of dwellings and in other housing-related activities on the basis of race, color, religion, sex, disability, familial status, or national origin.¹ The Department of Housing and Urban Development's (HUD's) Office of General Counsel issues this guidance to explain how the Fair Housing Act applies to ensure that the growing number of local nuisance ordinances and crime-free housing ordinances do not lead to discrimination in violation of the Act.²

This guidance primarily focuses on the impact these ordinances may have on domestic violence victims, but the Act and the standards described herein apply equally to victims of domestic violence and other crimes and to those in need of emergency services who may be subjected to discrimination prohibited by the Act due to the operation of these ordinances. This guidance therefore addresses both the discriminatory effects and disparate treatment methods of proof under the Act, and briefly describes the obligation of HUD fund recipients to consider the impacts of these ordinances in assessing how they will fulfill their affirmative obligation to further fair housing.³ HUD will issue subsequent guidance addressing more specifically how the Fair Housing Act applies to ensure that local nuisance or crime-free housing ordinances do not lead to housing discrimination because of disability.⁴

¹ 42 U.S.C. §§ 3601-19.

² State and local governments use a variety of terms, including "nuisance," "chronic nuisance," "crime-free," or "disorderly behavior" to describe the types of ordinances addressed by this guidance.

³ Local governments and landlords who receive federal funding may also violate the Violence Against Women Act, which, among other things, prohibits them from denying "assistance, tenancy, or occupancy" to any person because of domestic violence-related activity committed by a household member, guest or "other person in control" of the tenant if the tenant or an "affiliated individual" is the victim. 42 U.S.C. § 14043e-11(b)(3)(A).

⁴ Discrimination prohibited by the Fair Housing Act includes "a refusal to make a reasonable accommodation in rules, policies, practices, and services, when such accommodation may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B).

II. Background

A. Nuisance Ordinances

A growing number of local governments are enacting a variety of nuisance ordinances that can affect housing in potentially discriminatory ways. For example, in Illinois alone, more than 100 such ordinances have been adopted.⁵ These ordinances often label various types of conduct associated with a property—whether the conduct is by a resident, guest or other person—a “nuisance” and require the landlord or homeowner to abate the nuisance under the threat of a variety of penalties.⁶ The conduct defined as a nuisance varies by ordinance and has ranged from conduct affecting the appearance of the property – such as littering,⁷ failing to tend to one’s lawn⁸ or abandoning a vehicle,⁹ to general prohibitions related to the conduct of a tenant or guest – such as disorderly or disruptive conduct,¹⁰ disrupting the quiet use and enjoyment of neighboring properties,¹¹ or any criminal conduct occurring on or near the property.¹² Nuisance conduct often

⁵ The Sargent Shriver National Center on Poverty Law noted that in August 2013, “more than 100 municipalities in the state of Illinois alone ha[d] adopted some kind of [nuisance or crime-free] ordinance,” with the number continuing to increase. Emily Werth, SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, *The Cost of Being “Crime Free”: Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances* 1 (2013), <http://povertylaw.org/sites/default/files/files/housing-justice/cost-of-being-crime-free.pdf>.

Other research has identified 37 nuisance ordinances in Pennsylvania. News Release, Pennsylvania Coalition Against Domestic Violence, *Executive Director Dierkers Praises Legislators for Shielding Domestic Violence Victims from Eviction* (Oct. 16, 2014) [hereinafter News Release], http://www.pcadv.org/Resources/HB1796_PR_10162014.pdf. Additionally, 59 nuisance ordinances have been identified across every region of the country, including in large metropolitan cities and small towns, 39 of which define domestic violence, assault, sexual abuse, or battery as nuisance activities. Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women* (online supplement), 78 AM. SOCIOLOGICAL REV. 2–3, 4–18 (2013) [hereinafter Desmond & Valdez (online supplement)], http://scholar.harvard.edu/files/mdesmond/files/unpolicing.asr2013.online.supplement_0.pdf.

⁶ Although nuisance ordinances have been enacted that apply to both owner-occupied and rental housing, this guidance focuses on the application of the Fair Housing Act to a local government’s enactment and enforcement of nuisance and crime-free ordinances against persons who reside in rental housing. Much of the legal analysis in this guidance applies equally to owner-occupied housing as well.

⁷ See, e.g., PORTLAND, OR., CODE § 14.B.60.010(D)(9) (2013), <https://www.portlandoregon.gov/citycode/?c=28531>; CARSON CITY, NEV., CODE § 8.08.70 (2005), https://www.municode.com/library/nv/carson_city/codes/code_of_ordinances?nodeId=TIT8PUPESAMO_CH8.08N_U_8.08.110JUABUNVE#!.

⁸ See, e.g., JEFFERSON, WIS., CODE § 197-6(F) (2002), <http://ecode360.com/9781229>.

⁹ See, e.g., ADAIR VILLAGE, OR. CODE § 40.610(5) (2012), <http://www.adairvillage.org/wordpress/wp-content/uploads/2012/06/Chapter-40-Public-Nuisance-2012.pdf>; CARSON CITY, NEV., CODE § 8.08.110 (2005), https://www.municode.com/library/nv/carson_city/codes/code_of_ordinances?nodeId=TIT8PUPESAMO_CH8.08N_U_8.08.110JUABUNVE#!; see also Werth, *supra* note 5, at 17.

¹⁰ See, e.g., WATERTOWN, WIS. CODE § 12.08(d)(ii) (2014), http://www.ci.watertown.wi.us/document_center/Chapter_12.pdf; WEST CHICAGO, ILL., CODE § 10-53 (2008), https://www.municode.com/library/il/west_chicago/codes/code_of_ordinances?nodeId=COOR_CH10NU_ARTVII_CHNUPRAB_S10-52VI.

¹¹ See, e.g., ARIZ. REV. STAT. § 13-2917 (2006).

¹² See SPOKANE, WASH., CODE § 10.08A.20(H) (2016), <https://my.spokanecity.org/smc/?Section=10.08A.020>; see also ACLU WOMEN’S RIGHTS PROJECT & THE SOC. SCI. RESEARCH COUNCIL, *Silenced: How Nuisance Ordinances Punish Crime Victims in New York* 8 (2015) [hereinafter *Silenced*], <https://www.aclu.org/report/silenced-how-nuisance-ordinances-punish-crime-victims-new-york> (citing as examples of harmful nuisance ordinances PATTERSON, N. Y., CODE § 72-2(K) (2009),

includes what is characterized by the ordinance as an “excessive” number of calls for emergency police or ambulance services, typically defined as just a few calls within a specified period of time by a tenant, neighbor, or other third party, whether or not directly associated with the property.¹³

In some jurisdictions, an incident of domestic violence is defined as a nuisance without regard to whether the resident is the victim or the perpetrator of the domestic violence.¹⁴ In other jurisdictions, incidents of domestic violence are not specifically defined as nuisances, but may still be categorized as such because the ordinance broadly defines nuisance activity as the violation of any federal, state or local law, or includes conduct such as disturbing the peace, excessive noise, disorderly conduct, or calls for emergency services that exceed a specified number within a given timeframe.¹⁵ Some ordinances specifically define “excessive” calls for police or emergency services as nuisances, even when the person in need of services is a victim of domestic violence or another crime or otherwise in need of police, medical or other emergency assistance.¹⁶ Even where ordinances expressly exclude victims of domestic violence or other crimes, victims are still frequently deemed to have committed nuisance conduct because police and other emergency service providers may not log the call as domestic violence, instead categorizing it incorrectly as property damage, disturbing the peace or another type of nuisance conduct.¹⁷ Some victims also are hesitant or afraid to identify themselves as victims of abuse.¹⁸

The ordinances generally require housing providers either to abate the alleged nuisance or risk penalties, such as fines, loss of their rental permits, condemnation of their properties and, in some extreme instances, incarceration.¹⁹ Some ordinances may require the housing provider to evict the resident and his or her household after a specified number of alleged nuisance

http://www.pattersonny.org/PDFs/Codes/Chapter72-Chronic_Public_Nuisance_Abatement.pdf; SCOTIA, N.Y., CODE § 196-12 (2009), <http://ecode360.com/13862484>; GLENS FALLS, N.Y., CODE § 146-2(C)(7) (2000), <http://ecode360.com/14410432>; AUBURN, N.Y., CODE § 213-3(D)(1) (1997), <http://ecode360.com/8969396>; ROCHESTER, N.Y., CHARTER § 3-15(B)(1)(w) (1984), <http://ecode360.com/28971339>); News Release, *supra* note 5.

¹³ See Werth, *supra* note 5, at 4, 18 n.70.

¹⁴ See, e.g., SPOKANE, WASH., CODE § 10.08A.20(H)(2)(q) (2016), <https://my.spokanecity.org/smc/?Section=10.08A.020>; see also Silenced, *supra* note 12, at 12; Anna Kastner, *The Other War at Home: Chronic Nuisance Laws and the Revictimization of Survivors of Domestic Violence*, 103 CALIF. L. REV. 1047, 1058 (2015); News Release, *supra* note 5.

¹⁵ See Kastner, *supra* note 14, at 1058 (“Similarly, the ordinance could cause survivors to be evicted either because the 911 call was not coded as ‘domestic violence’ or because the landlord was not aware that domestic violence was occurring and could not create a plan to remediate the issue properly.”).

¹⁶ See Gretchen Arnold & Megan Slusser, *Silencing Women's Voices: Nuisance Property Laws and Battered Women*, L. & SOC. INQ. 15-17 (2015), <http://nhlp.org/files/001.%20Silencing%20Women's%20Voices-%20Nuisance%20Property%20Laws%20and%20Battered%20Women%20-%20G%20Arnold%20and%20M%20Slusser.pdf>.

¹⁷ See, e.g., BEACON, N.Y., CODE § 159-3(A)(20) (2011) (exempting domestic violence victims from being penalized under nuisance ordinance where a police officer properly “observes evidence that a domestic dispute occurred”).

¹⁸ See, e.g., Arnold & Slusser, *supra* note 16, at 15–16.

¹⁹ See, e.g., Desmond & Valdez (online supplement), *supra* note 5, at 4-18; Cari Fais, *Denying Access to Justice: The Cost of Applying Chronic Nuisance Laws to Domestic Violence*, 108 COLUM. L. REV. 1181, 1189 (2008).

violations—often quite low—within a specific timeframe.²⁰ For example, in at least one jurisdiction, three calls for emergency police or medical help within a 30-day period is considered to be a nuisance,²¹ and in another jurisdiction, two calls for such services within one year qualify as a nuisance.²² Even when nuisance ordinances do not explicitly require evictions, a number of landlords resort to evicting the household to avoid penalties.²³

In many jurisdictions, domestic-violence-related calls are the largest category of calls received by police.²⁴ “Intimate partner violence, sexual violence, and stalking are widespread” and impact millions of Americans each year.²⁵ “On average, 24 people per minute are victims of rape, physical violence, or stalking by an intimate partner in the United States” – more than 12 million individuals over the course of a year.²⁶ From 1994 to 2010, approximately 80 percent of the victims of intimate partner violence in the nation were women.²⁷ Women with disabilities are more likely to be subjected to domestic violence than women without disabilities.²⁸

Studies have found that victims of domestic violence often do not report their initial incident of domestic violence and instead suffer multiple assaults before contacting the police or seeking a protective order or other assistance.²⁹ Victims of domestic violence often are reluctant to

²⁰ See Werth, *supra* note 5 at 4 n.9.

²¹ See, e.g., CINCINNATI, OH. CODE § 761-3(a) (2013), <http://www.municode.com/resources/gateway.asp?pid=19996&sid=35>.

²² See ST. LOUIS, MO., CODE § 15.42.020(G) (2014), https://www.municode.com/library/mo/st._louis/codes/code_of_ordinances?nodeId=TIT15PUPEMOWE_DIVIVOFAGPUPE_CH15.42PUNU#!.

²³ See Arnold & Slusser, *supra* note 16, at 13–15 (2015), <http://nhlp.org/files/001.%20Silencing%20Women's%20Voices-%20Nuisance%20Property%20Laws%20and%20Battered%20Women%20-%20G%20Arnold%20and%20M%20Slusser.pdf>. While local governments might not explicitly require eviction as the primary nuisance abatement method in their ordinances, in practice, governments may indicate to landlords that eviction is the only acceptable nuisance abatement method. See, e.g., Matthew Desmond & Nicol Valdez, *Unpolicing the Urban Poor: Consequences of Third-Party Policing for Inner-City Women*, 78 AM. SOC. REV. 117, 135 (2013), http://scholar.harvard.edu/files/mdesmond/files/desmond.valdez.unpolicing.asr_0.pdf (“[T]he [Milwaukee Police Department] cleared landlords who evicted domestic violence victims—‘Plan Accepted!’—but pressured those who refused to do so.”).

²⁴ Andrew R. Klein, NATIONAL INST. OF JUSTICE, U.S. DEP’T. OF JUSTICE, *Practical Implications of Current Domestic Violence Research* 1 (2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

²⁵ CTRS. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP’T. OF HEALTH & HUMAN SERV., *Injury Prevention & Control* (last updated Sep. 8, 2014), <http://www.cdc.gov/violenceprevention/nisvs/infographic.html>.

²⁶ CTRS. FOR DISEASE CONTROL AND PREVENTION, U.S. DEP’T. OF HEALTH & HUMAN SERV., UNDERSTANDING INTIMATE PARTNER VIOLENCE (2014), <https://www.cdc.gov/violenceprevention/pdf/ipv-factsheet.pdf>.

²⁷ See SUSAN CASTALANO, BUREAU OF JUSTICE STATISTICS, U.S. DEP’T. OF JUSTICE, *Intimate Partner Violence, 1993–2010* 1 (2015), <http://www.bjs.gov/content/pub/pdf/ipv9310.pdf>. See also NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *There’s No Place Like Home: State Laws that Protect Housing Rights for Survivors of Domestic and Sexual Violence* 5 (2012) [hereinafter *No Place Like Home*], https://www.nlchp.org/Theres_No_Place_Like_Home (“In some areas of the country 1 in 4 homeless adults reported that domestic violence was a cause of their homelessness, and between 50% and 100% of homeless women have experienced domestic or sexual violence at some point in their lives.”).

²⁸ OFFICE ON WOMEN’S HEALTH, U.S. DEP’T. OF HEALTH AND HUMAN SERV., *Violence Against Women With Disabilities* (last updated Sep. 4, 2015) [hereinafter WOMEN’S HEALTH], <http://www.womenshealth.gov/violence-against-women/types-of-violence/violence-against-women-with-disabilities.html>.

²⁹ KLEIN, *supra* note 24, at 6.

seek assistance because of, among other things, fear of reprisal from their attackers.³⁰ Nuisance ordinances (and crime-free housing ordinances) are becoming an additional factor that operates to discourage victims from reporting domestic violence and obtaining the emergency police and medical assistance they need.³¹

For example, a woman in Norristown, Pennsylvania who had been subjected to domestic violence by her ex-boyfriend was warned by police that if she made one more 911 call, she and her young daughter would be evicted from their home pursuant to the local nuisance ordinance.³² The ordinance operated under a “three strike” policy, allowing her no more than two calls to 911 for help. As a result, the woman was too afraid to call the police when her ex-boyfriend returned to her home and stabbed her. Rather than call for an ambulance, she ran out of her house in the hope she would not lose her housing.³³ A neighbor called the police and, due to the serious nature of her injuries, the woman was airlifted to the hospital. A few days after she returned home from the hospital, she was served with eviction papers pursuant to the local nuisance ordinance.³⁴

B. Crime-Free Lease Ordinances and Crime-Free Housing Programs

A number of local governments enforce crime-free lease ordinances or promote crime-free housing programs that incorporate the use of crime-free lease addenda.³⁵ Some of these ordinances operate like nuisance ordinances and penalize housing providers who fail to evict tenants when a tenant, resident or other person has allegedly engaged in a violation of a federal, state and/or local law, regardless of whether the tenant or resident was the victim of the crime at issue.³⁶ Others mandate or strongly encourage housing providers to include lease provisions that require or permit housing providers to evict tenants where a tenant or resident has allegedly engaged in a single incident of criminal activity, regardless of whether the activity occurred on or off the property.³⁷

These provisions often allow housing providers to evict tenants when a guest or other person allowed onto the property by the tenant or resident allegedly engages in criminal activity on

³⁰ See Arnold & Slusser, *supra* note 16, at 15.

³¹ *Id.* at 22; Fais, *supra* note 19, at 1202; Werth, *supra* note 5, at 8.

³² Complaint at 9–17, *Briggs v. Borough of Norristown et al.*, No. 2013 C 2191 (E.D. Pa. Apr. 24, 2013) [hereinafter Complaint], http://www.aclu.org/files/assets/norristown_complaint.pdf.

³³ *Id.*; Lakisha Briggs, *I Was a Domestic Violence Victim. My Town Wanted Me Evicted for Calling 911*, GUARDIAN, (Sep. 11, 2015), <https://www.theguardian.com/commentisfree/2015/sep/11/domestic-violence-victim-town-wanted-me-evicted-calling-911>.

³⁴ *Id.* See also Press Release, U.S. Department of Housing and Urban Development, HUD and Philadelphia Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence (Oct. 2, 2014), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-121.

³⁵ See, e.g., HESPERIA, CAL., HEALTH AND SAFETY CODE § 8.20.50 (2015), https://www.municode.com/library/ca/hesperia/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.20CRFRREHOPR_8.20.050CRFRREHOPR.

³⁶ See Werth, *supra* note 5, at 3 n.8.

³⁷ See, e.g., SAN BERNARDINO, CAL., HEALTH AND SAFETY CODE § 15.27.050 (2011), <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=19233>; City of San Bernardino Crime Free Multi-Housing Program Crime-Free Lease Addendum, <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=11259> (“A single violation of any of the provisions of this added addendum shall be deemed a serious violation and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for termination of the lease.”).

or near the property, regardless of whether the resident was a victim of the criminal activity or a party to it.³⁸ The criminal activity that constitutes a lease violation is frequently broadly and ambiguously defined and may include any violation of federal, state or local laws, however minor.³⁹ Thus, disorderly conduct, excessive noise and similar activity may constitute a crime resulting in eviction.⁴⁰ Crime-free lease addenda often do not provide exceptions for cases where a resident or tenant is the victim of domestic violence or another crime.⁴¹ And, as previously noted, even where exceptions do exist, victims of domestic violence and other crimes may be mistakenly categorized and face eviction despite the exception.⁴² For example, police often arrest both the victim and the perpetrator under “dual arrest” policies when a victim has defended herself or himself from the perpetrator.⁴³

Furthermore, some crime-free housing ordinances mandate or strongly encourage housing providers to implement lease provisions that require eviction based on an arrest alone, or do not require an arrest or conviction to evict a tenant, but rather allow housing providers to rely on a preponderance of the evidence standard while remaining silent on who is responsible for determining that this standard has been met.⁴⁴ The principles discussed in HUD’s “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions”⁴⁵ are instructive in

³⁸ See, e.g., HESPERIA, CAL., HEALTH AND SAFETY CODE § 8.20.50 (2015), https://www.municode.com/library/ca/hesperia/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.20CRFRREHOPR_8.20.050CRFRREHOPR (mandating that all landlords include the Hesperia Crime-Free Lease Addendum, which requires that a single violation of the addendum, whether committed by resident, guest, or other person, provides good cause for termination of tenancy); Hesperia Crime-Free Lease Addendum, <http://www.cityofhesperia.us/DocumentCenter/View/13394>.

³⁹ See Werth, *supra* note 5, at 17.

⁴⁰ See, e.g., WATERTOWN, WIS. CODE § 12.08(d)(ii) (2014), http://www.ci.watertown.wi.us/document_center/Chapter_12.pdf.

⁴¹ See Werth, *supra* note 5, at 8.

⁴² See, e.g., OPEN COMMUNITIES & SARGENT SHRIVER NATIONAL CENTER ON POVERTY LAW, *Reducing the Cost of Being Crime Free: Alternative Strategies to Crime Free/Nuisance Property Ordinances in Illinois* 3 (2015) <http://povertylaw.org/sites/default/files/images/advocacy/housing/reducing-the-cost-of-crime-free.pdf>.

⁴³ See, e.g., Kastner, *supra* note 14, at 1065; see Werth, *supra* note 5, at 21.

⁴⁴ See, e.g., Werth, *supra* note 5, at 12 (noting that some ordinances allow evictions based on arrests or citations alone); LAS VEGAS, NEV., CODE § 6.09.20 (2012) (requiring landlords to complete training encouraging use of Crime-Free Addendum, which permits eviction based on single alleged violation, as shown by preponderance of evidence, rather than criminal conviction); Las Vegas Crime Free Multi-Housing Program Crime-Free Addendum (2014), http://www.lvmpd.com/Portals/0/pdf/prevention/English_CFAddendum01_2014.pdf); SAN BERNARDINO, CAL., HEALTH AND SAFETY CODE § 15.27.050 (2011), <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=19233> (requiring landlords to use Crime-Free Lease Addendum, which permits eviction based on single alleged violation of addendum as shown by preponderance of evidence, rather than criminal conviction); City of San Bernardino Crime Free Multi-Housing Program Crime-Free Lease Addendum, <https://www.ci.san-bernardino.ca.us/civicax/filebank/blobdload.aspx?blobid=11259>); Hesperia, Cal., Health and Safety Code § 8.20.50 (2015), https://www.municode.com/library/ca/hesperia/codes/code_of_ordinances?nodeId=TIT8HESA_CH8.20CRFRREHOPR_8.20.050CRFRREHOPR (providing chief of police discretion as to whether or not to notify the landlord of the evidence or documents, if any, used to determine that a resident engaged in criminal activity); see also Werth, *supra* note 5, at 4.

⁴⁵ See HELEN R. KANOVSKY, GENERAL COUNSEL, U.S. DEP’T OF HOUS. & URBAN DEV., *Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions* (2016), https://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHASStandCR.pdf.

evaluating the fair housing implications of crime-free lease ordinances and crime-free lease addenda mandated or encouraged by localities and enforced by housing providers.⁴⁶

III. Discriminatory Effects Liability and Enforcement of Nuisance Ordinances and Crime-Free Housing Ordinances

A local government's policies and practices to address nuisances, including enactment or enforcement of a nuisance or crime-free housing ordinance, violate the Fair Housing Act when they have an unjustified discriminatory effect, even when the local government had no intent to discriminate.⁴⁷ Under this standard, a facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification.⁴⁸ Thus, where a policy or practice that restricts the availability of housing on the basis of nuisance conduct has a disparate impact on individuals of a particular protected class, the policy or practice is unlawful under the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the local government, or if such interest could be served by another practice that has a less discriminatory effect.⁴⁹

Discriminatory effects liability is assessed under a three-step, burden-shifting standard requiring a fact-specific analysis.⁵⁰ The following sections discuss the three steps used to analyze whether a local government's enforcement of a nuisance or crime-free housing ordinance results in a discriminatory effect in violation of the Act. As explained in Section IV, below, a different analytical framework is used to evaluate claims of intentional discrimination.

A. Evaluating Whether the Challenged Nuisance Ordinance or Crime-Free Housing Ordinance Policy or Practice Has a Discriminatory Effect

In the first step of the analysis, a plaintiff (or HUD in an administrative enforcement action) has the burden to prove that a local government's enforcement of its nuisance or crime-free housing ordinance has a discriminatory effect, that is, that the local government's nuisance or crime-free housing ordinance policy or practice results or predictably will result in a disparate impact on a group of persons because of a protected characteristic.⁵¹ This is also true for a local

⁴⁶ In addition to being liable for their own discriminatory conduct, housing providers may have a cause of action under the Fair Housing Act against a locality if a locality's ordinance requires housing providers to discriminate based on a protected characteristic. *See, e.g., Waterhouse v. City of Am. Canyon*, 2011 U.S. Dist. LEXIS 60065, *1, 13–15 (N.D. Cal. 2011) (concluding that “forcing the owners of a mobile-home park to discriminate on the basis of familial status through a series of city ordinances . . . violates the federal Fair Housing Act.”).

⁴⁷ 24 C.F.R. § 100.500; *accord Texas Dep't of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, ___ U.S. ___, 135 S. Ct. 2507, 2511 (2015).

⁴⁸ For purposes of this guidance, the term “policy or practice” encompasses governments' nuisance and crime-free ordinances as well as their enforcement of the ordinances. It also includes government activities related to crime-free housing programs that may not be specified by ordinance.

⁴⁹ 24 C.F.R. § 100.500; *see also Inclusive Cmty. Project*, 135 S. Ct. at 2514–15 (summarizing HUD's Discriminatory Effects Standard in 24 C.F.R. § 100.500).

⁵⁰ *See* 24 C.F.R. § 100.500.

⁵¹ 24 C.F.R. § 100.500(c)(1). A discriminatory effect can also be proven with evidence that the policy or practice creates, increases, reinforces, or perpetuates segregated housing patterns. *See* 24 C.F.R. § 100.500(a). This guidance addresses only the method for analyzing disparate impact claims, which in HUD's experience are more commonly asserted in this context.

government's policy or practice encouraging or incentivizing housing providers to adopt crime-free lease addenda (and the discussion throughout the guidance applies equally to such actions). This burden is satisfied by presenting evidence proving that the challenged policy or practice actually or predictably results in a disparate impact.

Different data sources may be available and useful to demonstrate that a government's ordinance actually or predictably results in a disparate impact, which is ultimately a fact-specific and case-specific inquiry. While state or local statistics typically are presented where available and appropriate based on the local government's jurisdiction or other facts particular to a given case, national statistics may be relevant and appropriate, depending on the specific case and the nature of the claim.

Local statistics are likely to be available for use in establishing whether a local government's enforcement of its nuisance or crime-free ordinance has a disparate impact. Other evidence – for example, resident data and files, demographic data, city and police records including data on enforcement of nuisance or crime-free ordinances, citations and correspondence between housing providers and city officials and court records regarding nuisance abatement – may also be relevant in determining whether a challenged nuisance or crime-free housing ordinance policy or practice causes a disparate impact.

Evidence of nationwide disparities in the enforcement of nuisance or crime-free ordinances based on protected characteristics may be relevant to consider, depending on the specific case and the nature of the claim.⁵² Also, in some cases, national statistics may provide grounds for HUD to investigate complaints challenging the enforcement of nuisance ordinances. For example, nationally, women comprise approximately 80 percent of all individuals subjected to domestic violence each year,⁵³ which may provide grounds for HUD to investigate under the Fair Housing Act allegations that the adverse effects of a nuisance ordinance fall more heavily on victims of domestic violence.

Whether in the context of an investigation or administrative enforcement action by HUD or private litigation, a local government will have the opportunity to offer evidence to refute the claim that its nuisance ordinance causes a disparate impact on one or more protected classes.

B. Evaluating Whether the Challenged Nuisance Ordinance or Crime-Free Housing Ordinance is Necessary to Achieve a Substantial, Legitimate, Nondiscriminatory Interest

In the second step of the discriminatory effects analysis, the burden shifts to the local government to prove that the challenged nuisance or crime-free housing ordinance is necessary

⁵² Compare *Dothard v. Rawlinson*, 433 U.S. 321, 330 (1977) (“[R]eliance on general population demographic data was not misplaced where there was no reason to suppose that physical height and weight characteristics of Alabama men and women differ markedly from those of the national population.”), with *Mountain Side Mobile Estates P’ship v. Sec’y of Hous. & Urban Dev.*, 56 F.3d 1243, 1253 (10th Cir. 1995) (“In some cases national statistics may be the appropriate comparable population. However, those cases are the rare exception and this case is not such an exception.”) (citation omitted).

⁵³ See CASTALANO, *supra* note 27, at 1.

to achieve a substantial, legitimate, nondiscriminatory interest of the local government.⁵⁴ The interest of the local government may not be hypothetical or speculative, meaning the local government must be able to prove with evidence what the government interest is, that its interest is legitimate, substantial and nondiscriminatory, and that the challenged practice is necessary to achieve that interest.⁵⁵ Assertions based on generalizations or stereotypes about persons deemed to engage in nuisance or criminal conduct are not sufficient to prove that an ordinance or its enforcement is necessary to achieve the local government’s substantial, legitimate, nondiscriminatory interest.

As explained in the preamble to HUD’s 2013 Discriminatory Effects Final Rule, a “substantial” interest is a core interest of the organization that has a direct relationship to the function of that organization.⁵⁶ The requirement that an interest be “legitimate” means that the local government’s justification must be genuine and not false or fabricated.⁵⁷ A number of local governments have nuisance or crime-free ordinances that encourage, require or are likely to result in housing providers evicting or taking other adverse housing actions against residents, including victims of domestic violence and other crimes, because the residents requested police, medical or other emergency assistance, without regard to whether the calls were reasonable under the circumstances.⁵⁸ Where such a practice is challenged and proven to have a disparate impact, the local government would have the difficult burden to prove that cutting off access to emergency services for those in grave need of such services, including victims of domestic violence or other crimes, thereby potentially endangering their lives, safety and security,⁵⁹ in fact achieves a core interest of the local government and was not undertaken for discriminatory reasons or in a discriminatory manner. Similarly, if the local government’s policy or practice requires or encourages housing providers to evict victims of domestic violence or other crimes or others in need of emergency services, the local government would have the burden to prove that such a policy or practice in fact is necessary to achieve the local government’s substantial, legitimate, nondiscriminatory interest.

C. Evaluating Whether There Is a Less Discriminatory Alternative

The third step of the discriminatory effects analysis is applicable only if a local government successfully proves that its nuisance or crime-free housing ordinance, policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. If the analysis reaches the third step, the burden shifts back to the plaintiff or HUD to prove that such interest could be served by another policy or practice that has a less discriminatory effect.⁶⁰

⁵⁴ 24 C.F.R. § 100.500(c)(2).

⁵⁵ Implementation of the Fair Housing Act’s Discriminatory Effects Standard, 78 Fed. Reg. 11460, 11471 (Feb. 15, 2013) (preamble to final rule codified at 24 C.F.R. pt. 100).

⁵⁶ 78 Fed. Reg. at 11470.

⁵⁷ *Id.*

⁵⁸ See Werth, *supra* note 5, at 8.

⁵⁹ When domestic violence victims are evicted on the basis of a nuisance citation, they may often lack alternative housing and experience homelessness. See, e.g., Amanda Gavin, *Chronic Nuisance Ordinances: Turning Victims of Domestic Violence into “Nuisances” in the Eyes of Municipalities*, 119 PENN ST. L. REV. 257, 260 (“on any given day, over 3000 people face homelessness because they are unable to find shelter away from their abusers . . . making domestic violence a leading cause of homelessness in the United States”).

⁶⁰ 24 C.F.R. § 100.500(c)(3); accord *Inclusive Cmty. Project*, 135 S. Ct. at 2515.

The identification of a less discriminatory alternative will depend on the particulars of the policy or practice at issue, as well as the specific nature of the underlying problem the ordinance seeks to address.

IV. Intentional Discrimination and Enforcement of Nuisance Ordinances or Crime-Free Housing Ordinances

A local government may also violate the Fair Housing Act if it intentionally discriminates in its adoption or enforcement of a nuisance or crime-free housing ordinance. This occurs when the local government treats a resident differently because of sex, race or another protected characteristic. The analysis is the same as is used to analyze whether any housing ordinance was enacted or enforced for intentionally discriminatory reasons.

Generally, two types of claims of intentional discrimination may arise. One type of intentional discrimination claim arises where a local government enacts a nuisance ordinance or crime-free housing ordinance for discriminatory reasons. Another type is where a government selectively enforces a nuisance or crime-free housing ordinance in a discriminatory manner. For the first type of claim, in determining whether a facially neutral ordinance was enacted for discriminatory reasons, courts generally look to certain factors. The factors, all of which need not be satisfied, include, but are not limited to: (1) the *impact* of the ordinance at issue, such as whether the ordinance disproportionately impacts women compared to men, minority residents compared to white residents, or residents with disabilities or a certain type of disability compared to residents without disabilities; (2) the *historical background* of the ordinance, such as whether there is a history of discriminatory conduct by the local government; (3) the *specific sequence of events*, such as whether the locality adopted the ordinance only after significant community opposition motivated by race or another protected characteristic; (4) *departures from the normal procedural sequence*, such as whether the locality deviated from normal procedures for enacting a nuisance ordinance; (5) *substantive departures*, such as whether the factors usually considered important suggest that a local government should have reached a different result; and (6) the *legislative or administrative record*, such as any statements by members of the local decision-making body.⁶¹

For the second type of intentional discrimination claim, selective enforcement, where there is no “smoking gun” proving that a local government is selectively enforcing a nuisance or crime-free housing ordinance in a discriminatory way, courts look for evidence from which such an inference can be drawn. The evidence might be direct or circumstantial. For example, courts have noted that an inference of intentional sex discrimination could arise directly from evidence

⁶¹ *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265–66 (1977). See also *Hidden Vill., LLC v. City of Lakewood*, 867 F. Supp. 2d 920, 942 (N.D. Ohio 2012) (utilizing *Arlington Heights* factors to analyze whether municipal action was motivated by discriminatory intent); see, e.g., *Valdez v. Town of Brookhaven*, 2005 U.S. Dist. LEXIS 36713, *47 (E.D.N.Y. 2005) (explaining factors probative of discriminatory intent in case involving town’s alleged disproportionate enforcement of zoning and housing codes against Latinos).

that a housing providers seeks to evict female residents shortly after incidents of domestic violence.⁶²

A common method of establishing intentional discrimination indirectly, through circumstantial evidence, is through the familiar burden-shifting method of proving intentional discrimination originally established by the Supreme Court in the employment context.⁶³ In the standard complaint alleging selective enforcement of a nuisance or crime-free ordinance for discriminatory reasons, the plaintiff first must produce evidence to establish a prima facie case of disparate treatment. This may be shown, for example, by evidence that: (1) the plaintiff (or complainant in an administrative enforcement action) is a member of a protected class; (2) a local government official (or housing provider, depending on the circumstances) took action to enforce the nuisance or crime-free ordinance or lease addendum against the plaintiff or complainant because the plaintiff or complainant allegedly engaged in nuisance or criminal conduct; (3) the local government official or housing provider did not take action to enforce the nuisance or crime-free ordinance or lease addendum against a similarly-situated resident not of the plaintiff or complainant's protected class who engaged in comparable conduct; and (4) the local government or housing provider subjected the plaintiff or complainant to an adverse housing action as a result of the enforcement of the nuisance or crime-free ordinance or lease addendum. It is then the burden of the local government and/or housing provider, depending on the circumstances, to offer evidence of a legitimate, nondiscriminatory reason for the adverse housing action.⁶⁴ The proffered nondiscriminatory reason for the challenged decision must be clear, reasonably specific and supported by admissible evidence.⁶⁵ Purely subjective or arbitrary reasons will not be sufficient to demonstrate a legitimate, nondiscriminatory basis for differential treatment.⁶⁶

⁶² See *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 678 (D. Vt. 2005) (explaining that landlord's attempt to evict victim 72 hours after domestic violence incident could give rise to inference of discrimination on the basis of gender). See, e.g., *Dickinson v Zanesville Metro. Hous. Auth.*, 975 F. Supp. 2d 863, 872 (S.D. Ohio 2013) (articulating that a housing provider's failure to comply with the Violence Against Women Act and assignment of blame to the victim for the results of domestic violence could give rise to an inference of sex discrimination); *Meister v. Kansas City*, 2011 U.S. Dist. LEXIS 19166, *19–20 (D. Kan. 2011) (“[E]vidence that defendant knew that domestic violence caused damage to plaintiff's housing unit would help support a claim that she was evicted under circumstances giving rise to an inference of sex discrimination.”).

⁶³ See, generally, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) (articulating burden-shifting standard of proving intentional discrimination under Title VII).

⁶⁴ See, e.g., *Lindsay v. Yates*, 578 F.3d at 415 (articulating that if plaintiff presents evidence from which a reasonable jury could conclude that there exists a prima facie case of housing discrimination, then the burden shifts to the defendant to offer evidence of a legitimate, nondiscriminatory reason for the adverse housing decision); *Bouley*, 394 F. Supp. 2d at 678 (explaining that once a plaintiff has established a prima facie case of discrimination, the burden then shifts to the defendant to assert a legitimate, nondiscriminatory rationale for the challenged decision).

⁶⁵ See, e.g., *Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1040 (2d Cir. 1979) (“A prima facie case having been established, a Fair Housing Act claim cannot be defeated by a defendant which relies on merely hypothetical reasons for the plaintiff's rejection.”).

⁶⁶ See, e.g., *Soules v. U.S. Dep't of Hous. and Urban Dev.*, 967 F.2d 817, 822 (2d Cir. 1992) (“In examining the defendant's reason, we view skeptically subjective rationales concerning why he denied housing to members or protected groups. Our reasoning, in part, is that ‘clever men may easily conceal their [discriminatory] motivations.’” (quoting *United States v. City of Black Jack*, 508 F.2d 1179, 1185 (8th Cir. 1974))).

If the defendant (or respondent in a HUD administrative enforcement action) establishes a legitimate, nondiscriminatory reason for the adverse housing action, a plaintiff or HUD may still prevail by showing that the proffered reason was not the true reason for the adverse housing decision, and was instead a mere pretext for unlawful discrimination.⁶⁷ For example, the fact that the defendant (or respondent) acted upon comparable nuisance or criminal conduct differently for one or more individuals of a different protected class than the plaintiff or complainant is strong evidence that the defendant (or respondent) was not considering such conduct uniformly. Additionally, shifting or inconsistent explanations offered by the defendant (or respondent) for the adverse housing action may provide evidence of pretext. Similarly, a local government's claim that its nuisance citations would not cause tenant evictions because the citations were issued to the housing provider and not the residents could be evidence of pretext.⁶⁸ Ultimately, the evidence that may be offered to show that defendant's or respondent's stated justification is pretext for intentional discrimination will depend on the facts of a particular case.

V. Assessment of Nuisance Ordinances and Crime-Free Housing Ordinances as Part of the Duty to Affirmatively Further Fair Housing

In addition to prohibiting discrimination, the Fair Housing Act requires HUD to administer programs and activities relating to housing and urban development in a manner that affirmatively furthers the policies of the Act.⁶⁹ The purpose of the Act's affirmatively furthering fair housing (AFFH) mandate is to ensure that recipients of Federal housing and urban development funds do more than simply not discriminate: recipients also must take meaningful action to overcome fair housing issues and related barriers to fair housing choice and disparities in access to opportunity based on sex, race, national origin, disability, and other characteristics protected by the Act. Congress has repeatedly reaffirmed the AFFH mandate by requiring HUD program participants to certify that they will affirmatively further fair housing as a condition of receiving Federal funds.⁷⁰

In 2015, HUD issued a rule on affirmatively furthering fair housing which requires grantees who receive Community Development Block Grant, HOME, Housing Opportunities for Persons with AIDS, or Emergency Solutions Grant funding to conduct an assessment of fair housing for purposes of setting goals to affirmatively further fair housing. In conducting their assessments of fair housing, state and local governments should assess their nuisance ordinances, crime-free housing ordinances and related policies or practices, including the processes by which nuisance ordinance and crime-free housing ordinances are enforced, and consider how these ordinances, policies or practices may affect access to housing and access to police, medical and other governmental services based on sex, race, national origin, disability, and other characteristics protected by the Act. One step a local government may take toward meeting its duty to affirmatively further fair housing is to eliminate disparities by repealing a nuisance or

⁶⁷ See, e.g., *Bouley*, 394 F. Supp. 2d at 678.

⁶⁸ See *Hidden Vill.*, 867 F. Supp. 2d at 952 (noting that “[d]efendants appear blind to the possibility that repeatedly issuing citations to a landlord, based upon the actions of its tenants, would logically create an incentive for the landlord to evict his problem tenant . . . produc[ing] the same result—the eviction of [predominantly African American youth] but by different means.”).

⁶⁹ 42 U.S.C. § 3608(d), (e)(5).

⁷⁰ 42 U.S.C. §§ 5304(b)(2), 5306(d)(7)(B), 12705(b)(15), 1437C-1(d)(16).

crime-free ordinance that requires or encourages evictions for use of emergency services, including 911 calls, by domestic violence or other crime victims.

VI. Conclusion

The Fair Housing Act prohibits both intentional housing discrimination and housing ordinances, policies or practices that have an unjustified discriminatory effect because of protected characteristics. While the Act does not prohibit local governments from appropriately considering nuisance or criminal conduct when enacting laws related to housing, governments should ensure that such ordinances and related policies or practices do not discriminate in violation of the Fair Housing Act.

Eighty percent of domestic violence victims are women, and in some communities, racial or ethnic minorities are disproportionately victimized by crime. Where the enforcement of a nuisance or crime-free ordinance penalizes individuals for use of emergency services or for being a victim of domestic violence or other crime, a local government bears the burden of proving that any discriminatory effect caused by such policy or practice is supported by a legally sufficient justification. Such a determination cannot be based on generalizations or stereotypes.

Selective use of nuisance or criminal conduct as a pretext for unequal treatment of individuals based on protected characteristics violates the Act. Repealing ordinances that deny access to housing by requiring or encouraging evictions or that create disparities in access to emergency services because of a protected characteristic is one step local governments can take to avoid Fair Housing Act violations and as part of a strategy to affirmatively further fair housing.

Helen R. Kanovsky, General Counsel



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

February 9, 2011

MEMORANDUM FOR: FHEO Office Directors
FHEO Regional Directors

FROM: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs

SUBJECT: Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence Against Women Act (VAWA)

I. Purpose

This memorandum provides guidance to FHEO headquarters and field staff on assessing claims by domestic violence victims of housing discrimination under the Fair Housing Act (FHA). Such claims are generally based on sex, but may also involve other protected classes, in particular race or national origin. This memorandum discusses the legal theories behind such claims and provides examples of recent cases involving allegations of housing discrimination against domestic violence victims. This memorandum also explains how the Violence Against Women Act (VAWA)¹ protects some domestic violence victims from eviction, denial of housing, or termination of assistance on the basis of the violence perpetrated by their abusers.

II. Background

Survivors of domestic violence often face housing discrimination because of their history or the acts of their abusers. Congress has acknowledged that “[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence.”² Housing authorities and landlords evict victims under zero-tolerance crime policies, citing the violence of a household member, guest, or other person under the victim’s “control.”³ Victims are often evicted after repeated calls to the police for domestic violence incidents because of allegations of disturbance to other tenants. Victims are also evicted because of property damage caused by their abusers. In

¹ This guidance refers to the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA 2005), which included provisions in Title VI (“Housing Opportunities and Safety for Battered Women and Children”) that are applicable to HUD programs. The original version of VAWA, enacted in 1994, did not apply to HUD programs. Note also that HUD recently published its VAWA Final Rule. *See* HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246 (October 27, 2010).

² 42 U.S.C. § 14043e(3) (findings published in the Violence Against Women Act). Note that VAWA also protects male victims of domestic violence. *See* HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246, 66251 (“VAWA 2005 does protect men. Although the name of the statute references only women, the substance of the statute makes it clear that its protections are not exclusively applicable to women.”).

³ *See* 24 CFR § 5.100.

many of these cases, adverse housing action punishes victims for the violence inflicted upon them. This “double victimization”⁴ is unfair and, as explained in this guidance, may be illegal.

Statistics show that women are overwhelmingly the victims of domestic violence.⁵ An estimated 1.3 million women are the victims of assault by an intimate partner each year, and about 1 in 4 women will experience intimate partner violence in their lifetimes.⁶ The U.S. Bureau of Justice Statistics found that 85% of victims of domestic violence are women.⁷ In 2009, women were about five times as likely as men to experience domestic violence.⁸ These statistics show that discrimination against victims of domestic violence is almost always discrimination against women. Thus, domestic violence survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a cause of action for sex discrimination under the Fair Housing Act.⁹

In addition, certain other protected classes experience disproportionately high rates of domestic violence. For example, African-American and Native American women experience higher rates of domestic violence than white women. Black women experience intimate partner violence at a rate 35% higher than that of white females, and about 2.5 times the rate of women of other races.¹⁰ Native American women are victims of violent crime, including rape and sexual assault, at more than double the rate of other racial groups.¹¹ Women of certain national origins and immigrant women also experience domestic violence at disproportionate rates.¹² This means that victims of domestic violence may also have a cause of action for race or national origin discrimination under the Fair Housing Act.

III. HUD’s “One Strike” Rule and The Violence Against Women Act (VAWA)

In 2001, the Department issued a rule allowing housing authorities and landlords to evict tenants for criminal activity committed by any household member or guest, commonly known as the “one strike” rule.¹³ The rule allows owners of public and Section 8 assisted housing to terminate a tenant’s lease because of criminal activity by “a tenant, any member of the tenant’s household, a

⁴ See Lenora M. Lapidus, *Doubly Victimized: Housing Discrimination Against Victims of Domestic Violence*, 11 J. GENDER, SOC. POL’Y & L. 377 (2003).

⁵ We recognize that men also experience domestic violence. However, because of the wide disparity in victimization, and because many FHAct claims will be based on the disparate impact of domestic violence on women, we use feminine pronouns throughout this guidance.

⁶ Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States* (2003).

⁷ U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* (2003).

⁸ Jennifer R. Truman & Michael R. Rand, U.S. Department of Justice, *Criminal Victimization, 2009* (2010).

⁹ Domestic violence by same-sex partners would be analyzed in the same manner and would be based on sex and any other applicable protected classes.

¹⁰ *Id.*

¹¹ Steven W. Perry, U.S. Dep’t of Justice, NCJ 203097, *A Bureau of Justice Statistics Statistical Profile, 1992-2002: American Indians and Crime* (2004).

¹² For statistics on specific groups, see American Bar Association Commission on Domestic Violence, Survey of Recent Statistics, <http://new.abanet.org/domesticviolence/Pages/Statistics.aspx>.

¹³ Screening and Eviction for Drug Abuse and Other Criminal Activity, 66 Fed. Reg. 28776 (May 24, 2001) (amending 24 CFR pts. 5, 200, 247, 880, 884, 891, 960, 966, and 982) (often referred to as the “one strike” rule).

guest or another person under the tenant's control"¹⁴ that "threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including property management staff residing on the premises); or... threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises."¹⁵ This policy would seem to allow evictions of women for the violent acts of their spouses, cohabiting partners, or visitors. However, the Violence Against Women and Department of Justice Reauthorization Act of 2005 (VAWA)¹⁶ prohibits such evictions in public housing, voucher, and Section 8 project-based programs. VAWA protects victims of domestic violence, dating violence, sexual assault, and stalking.¹⁷

VAWA provides that being a victim of domestic violence, dating violence, or stalking is not a basis for denial of assistance or admission to public or Section 8 tenant-based and project-based assisted housing. Further, incidents or threats of abuse will not be construed as serious or repeated violations of the lease or as other "good cause" for termination of the assistance, tenancy, or occupancy rights of a victim of abuse. Moreover, VAWA prohibits the termination of assistance, tenancy, or occupancy rights based on criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control if the tenant or immediate member of the tenant's family is a victim of that domestic violence, dating violence, or stalking.¹⁸

VAWA also allows owners and management agents to request certification from a tenant that she is a victim of domestic violence, dating violence, or stalking and that the incidence(s) of threatened or actual abuse are bona fide in determining whether the protections afforded under VAWA are applicable.¹⁹ The Department has issued forms for housing authorities and landlords to use for such certification requests,²⁰ but tenants may also present third-party documentation of the

¹⁴ 24 CFR § 5.100.

¹⁵ 24 CFR § 5.859.

¹⁶ Pub. L. 109-162, 119 Stat. 2960 (2006). For the Department's final rule on VAWA, see HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246 (Oct. 27, 2010) (amending 24 CFR pts. 5, 91, 880, 882, 883, 884, 886, 891, 903, 960, 966, 982, and 983).

¹⁷ Each of these terms is defined in VAWA and HUD's corresponding regulations. See HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246, 66258.

¹⁸ Note the exception to these provisions at 24 C.F.R. § 5.2005(d)(2), which states that VAWA does not limit the authority of a PHA, owner, or management agent to evict or terminate a tenant's assistance if they can demonstrate an actual and imminent threat to other tenants or those employed or providing services at the property if that tenant is not terminated. However, this exception is limited by §5.2005(d)(3), which states that a PHA, owner, or management agent can terminate assistance only when there are no other actions that could reduce or eliminate the threat. Other actions include transferring the victim to different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or developing other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat.

¹⁹ 42 U.S.C. §1437d(u)(1)(A) (public housing program), 42 U.S.C. §1437f(ee)(1) (voucher programs).

²⁰ HUD Housing Notice 09-15 transmits Form HUD-91066, Certification of Domestic Violence, Dating Violence or Stalking for use by owners and management agents administering one of Multifamily Housing's project-based Section 8 programs and Form HUD-91067, the HUD-approved Lease Addendum, for use with the applicable HUD model lease for the covered project-based Section 8 program. HUD Public and Indian Housing Notice 2006-42 transmits form HUD-50066, Certification of Domestic Violence, Dating Violence or Stalking, for use in the Public Housing Program, Housing Choice Voucher Program (including project-based vouchers), Section 8 Project-Based Certification Program, and Section 8 Moderate Rehabilitation Program. See also PIH Notice 2006-23, Implementation of the Violence Against Women and Justice Department Reauthorization Act of 2005.

abuse, including court records, police reports, or documentation signed by an employee, agent, or volunteer of a victim service provider, an attorney, or a medical professional from whom the victim has sought assistance in addressing the abuse or the effects of the abuse.²¹ Finally, VAWA allows housing authorities and landlords to bifurcate a lease in a domestic violence situation in order to evict the abuser and allow the victim to keep her housing.²²

While VAWA provides important protections for victims of domestic violence, it is limited in scope. For example, it does not provide for damages.²³ In addition, VAWA does not provide an explicit private cause of action to women who are illegally evicted. Moreover, VAWA only protects women in public housing, voucher, and Section 8 project-based programs, so domestic violence victims in private housing have no similar protection from actions taken against them based on that violence. VAWA also may not protect a woman who does not provide the requisite documentation of violence,²⁴ while a claim of discrimination under the Fair Housing Act is not dependent on compliance with the VAWA requirements. In short, when a victim is denied housing, evicted, or has her assistance terminated because she has been a victim of domestic violence, the FHAct might be implicated and we may need to investigate whether that denial is based on, for example, race or sex.

IV. Legal Theories under the Fair Housing Act: Direct Evidence, Unequal Treatment, and Disparate Impact

Direct evidence. In some cases, landlords enforce facially discriminatory policies. These policies explicitly treat women differently from men. Such policies are often based on gender stereotypes about abused women. For example, if a landlord tells a female domestic violence victim that he does not accept women with a history of domestic violence as tenants because they always go back to the men who abuse them, his statement is direct evidence of discrimination based on sex. Investigations in direct evidence cases should focus on finding evidence about whether or not the discriminatory statement was made, whether the statement was applied to others to identify other potential victims, and whether it reflects a policy or practice by the landlord. The usual questions that address jurisdiction also apply.

Unequal treatment. In some cases, a landlord engages in unequal treatment of victims of domestic violence in comparison to victims of other crimes. Or a landlord's seemingly gender-neutral policy may be unequally applied, resulting in different treatment based on sex. For example, a policy of evicting households for criminal activity may be applied selectively against women who have been abused by their partners and not against the male perpetrators of the domestic violence. If there is evidence that women are being treated differently because of their status as victims of domestic violence, an unequal treatment theory applies. If an investigator finds evidence of unequal treatment, the investigation shifts to discovering the respondent's reasons for the differences and

²¹ 42 U.S.C. §1437d(u)(1)(C); 42 U.S.C. § 1437f(ee)(1)(c).

²² 42 U.S.C. §1437d(l)(6)(B); 42 U.S.C. § 1437f(c)(9)(C) .

²³ Remedies available under VAWA include, for example, the traditional PIH grievance process. *See* HUD Programs: Violence Against Women Act Conforming Amendments; Final Rule, 75 Fed. Reg. 66246, 66255.

²⁴ While VAWA 2005 allows owners and PHAs to request certification of domestic violence from victims, the law also provides that owners and PHAs "[a]t their discretion . . . may provide benefits to an individual based solely on the individual's statement or other corroborating evidence." 42 U.S.C.A. § 1437d(u)(1)(D); 42 U.S.C.A. § 1437f(ee)(1)(D).

investigating each reason to determine whether the evidence supports or refutes each reason. If a nondiscriminatory reason(s) is articulated, the investigation shifts again to examining the evidence to determine whether or not the reason(s) given is supported by the evidence or is a pretext for discrimination.²⁵

Disparate impact. In some cases, there is no direct evidence of unequal treatment, but a facially neutral housing policy, procedure, or practice disproportionately affects domestic violence victims. In these cases, a disparate impact analysis is appropriate. Disparate impact cases often arise in the context of “zero-tolerance” policies, under which the entire household is evicted for the criminal activity of one household member. The theory is that, even when consistently applied, women may be disproportionately affected by these policies because, as the overwhelming majority of domestic violence victims, women are often evicted as a result of the violence of their abusers.

There are four steps to a disparate impact analysis. First, the investigator must identify the specific policy, procedure, or practice of the landlord’s that is allegedly discriminatory. This process means both the identification of the policy, procedure, or practice and the examination of what types of crimes trigger the application of the policy. Second, the investigator must determine whether or not that policy, procedure, or practice was consistently applied. This step is important because it reveals the correct framework for the investigation. If the policy is applied unequally, then the proper analysis is unequal treatment, not disparate impact. If, however, the policy was applied consistently to all tenants, then a disparate impact analysis applies, and the investigation proceeds to the next step.

Third, the investigation must determine whether or not the particular policy, procedure, or practice has a significant adverse impact on domestic violence victims and if so, how many of those victims were women (or members of a certain race or national origin). Statistical evidence is generally used to identify the scope of the impact on a group protected against discrimination. These statistics should be as particularized as possible; they could demonstrate the impact of the policy as to applicants for a specific building or property, or the impact on applicants or residents for all of the landlord’s operations. For example, in a sex discrimination case, the investigation may uncover evidence that women in one apartment complex were evicted more often than men under a zero-tolerance crime policy. It would not matter that the landlord did not intend to discriminate against women, or that the policy was applied consistently. Proof of disparate impact claims is not an exact science. Courts have not agreed on any precise percentage or ratio that conclusively establishes a prima facie case. Rather, what constitutes a sufficiently disparate impact will depend on the particular facts and circumstances of each case.

If the investigation reveals a disparate impact based on sex, race, or national origin, the investigation then shifts to eliciting the respondent’s reasons for enforcing the policy. It is critical to thoroughly investigate these reasons. Why was the policy enacted? What specific outcome was it meant to achieve or prevent? Were there any triggering events? Were any alternatives considered, and if so, why were they rejected? Is there any evidence that the policy has been effective? What constitutes a sufficient justification will vary according to the circumstances. In general, the investigation will examine whether or not the offered justification is real and supported by a substantial business justification. For the purposes of this memorandum, it is important to

²⁵ See *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) for an explanation of the burden-shifting formula.

understand that an investigation must identify and evaluate the evidence supporting and refuting the justification.

Even if there is sufficient justification for the policy, there may be a less discriminatory alternative available to the respondent. A disparate impact investigation must consider possible alternative policies and analyze whether each policy would achieve the same objective with less discriminatory impact. For example, in a case of discriminatory eviction under a zero-tolerance policy, a landlord could adopt a policy of evicting only the wrongdoer and not innocent victims. This policy would protect tenants without unfairly penalizing victims of violence.

In summary, an investigation of a disparate impact case must seek evidence that a specific policy of the landlord's caused a substantial, disproportionate, adverse impact on a protected class of persons. Proving a disparate impact claim will generally depend on statistical data demonstrating the disparity and a causal link between the policy and the disparity; discriminatory intent is irrelevant.

V. Fair Housing Cases Involving Domestic Violence

Eviction Cases. Victims are often served with eviction notices following domestic violence incidents. Landlords cite the danger posed to other tenants by the abuser, property damage caused by the abuser, or other reasons for eviction. Several cases have challenged these evictions as violations of VAWA or the Fair Housing Act.

Alvera v. CBM Group, Case No. 01-857 (D. Or. 2001).²⁶ The victim was assaulted by her husband in their apartment. She obtained a restraining order against her husband, and he was subsequently arrested and jailed for the assault. She provided a copy of the restraining order to the property manager. The property manager then served her with a 24-hour eviction notice based on the incident of domestic violence. The notice specified: "You, someone in your control, or your pet, has seriously threatened to immediately inflict personal injury, or has inflicted personal injury upon the landlord or other tenants." The victim then submitted an application for a one-bedroom apartment in the same building. Management denied the application and refused to accept her rent. After a second application, management finally approved her for a one-bedroom apartment, but warned her that "any type of recurrence" of domestic violence would lead to her eviction.

The victim filed a complaint with HUD, which investigated her case and issued a charge of discrimination against the apartment management group. She elected to pursue the case in federal court. The parties later agreed to settle the lawsuit. The consent decree, approved by the Oregon district court in 2001, requires that the management group agree not to "evict, or otherwise discriminate against tenants because they have been victims of violence, including domestic violence" and change its policies accordingly. Employees of the management group must participate in education about discrimination and fair housing law. The management group also agreed to pay compensatory damages to the victim.

Warren v. Ypsilanti Housing Authority, Case No. 4:02-cv-40034 (E.D. Mich. 2003). The victim's ex-boyfriend broke into her house and physically abused her. She called the police to

²⁶ A copy of the determination is attached to this memo.

report the attack. When the Ypsilanti Housing Authority (YHA) learned of the attack, it attempted to evict the victim and her son under its zero-tolerance crime policy. The ACLU sued the YHA for discrimination, arguing that because victims of domestic violence are almost always women, the policy of evicting domestic violence victims based on the violence perpetrated against them had a disparate impact based on sex in violation of the federal Fair Housing Act and state law. The parties reached a settlement, under which the YHA agreed to cease evicting domestic violence victims under its “one-strike” policy and pay money damages to the victim.

Bouley v. Young-Sabourin 394 F. Supp. 2d 675 (D. Vt. 2005). The victim called the police after her husband attacked her in their home. She obtained a restraining order against her husband and informed her landlord. The landlord spoke to the victim about the incident, encouraging her to resolve the dispute and seek help through religion. The victim told her landlord that she would not let her husband return to the apartment and was not interested in religious help. The landlord then served her with a notice of eviction, stating that it was “clear that the violence would continue.” In a ruling on the parties’ cross-motions for summary judgment, the court held that the victim had presented a prima facie case of sex discrimination under the Fair Housing Act. The case later settled.

T.J. v. St. Louis Housing Authority (2005). The victim endured ongoing threats and harassment after ending her relationship with her abusive boyfriend. He repeatedly broke the windows of her apartment when she refused to let him enter. She obtained a restraining order and notified her landlord, who issued her a notice of lease violation for the property damage caused by the ex-boyfriend and required her to pay for the damage, saying she was responsible for her domestic situation. Her boyfriend finally broke into her apartment and, after she escaped, vandalized it. The housing authority attempted to evict her based on this incident. The victim filed a complaint with HUD, which conciliated the case. The conciliation agreement requires the housing authority to relocate her to another apartment, refund the money she paid for the broken windows, ban her ex-boyfriend from the property where she lived, and send its employees to domestic violence awareness training.

Lewis v. North End Village, Case No. 2:07-cv-10757 (E.D.Mich. 2007). The victim obtained a personal protection order against her abusive ex-boyfriend. Months later, the ex-boyfriend attempted to break into the apartment, breaking the windows and front door. The management company that owned her apartment evicted the victim and her children based on the property damage caused by the ex-boyfriend. With the help of the ACLU of Michigan, she filed a complaint against the management company in federal court, alleging sex discrimination under the FHAct. The case ultimately settled, with the management company agreeing to new, nondiscriminatory domestic violence policies and money damages for the victim.

Brooklyn Landlord v. R.F. (Civil Court of Kings County 2007). The victim’s ex-boyfriend continued to harass, stalk, and threaten her after she ended their relationship. In late April 2006, he came to her apartment in the middle of the night, banging on the door and yelling. The building security guard called by the victim was unable to reason with her abuser, who left before the police arrived. One week later, the abuser came back to the building, confronted the same security guard, and shot at him. The victim was served an eviction notice from her Section 8 landlord based on this incident. The victim filed a motion for summary judgment which asserted defenses to eviction

under VAWA and argued that the eviction constituted sex discrimination prohibited by the FHAct. The parties reached a settlement under which the landlord agreed to take measures to prevent the ex-boyfriend from entering the property.

Jones v. Housing Authority of Salt Lake County (D. Utah, filed 2007). The victim applied for and received a Section 8 voucher in 2006. She and her children moved into a house in Kearns, Utah later that year. She allowed her ex-husband, who had previously been abusive, to move into the house. Shortly after he moved in, the victim discovered that he had begun drinking again. After he punched a hole in the wall, the victim asked him to move out. When he refused, she told the Housing Authority that she planned to leave the home with her children to escape the abuse. The Housing Authority required her to sign a notice of termination of her housing assistance. The victim requested a hearing to protest the termination, and the Housing Authority decided that termination of her assistance was appropriate, noting that she had never called the police to report her husband's violent behavior. With the help of Utah Legal Services, she filed a complaint in federal court against the Housing Authority, alleging that the termination of her benefits violated VAWA and the FHAct.

Cleaves-Milan v. AIMCO Elm Creek LP, 1:09-cv-06143 (N.D. Ill., filed October 1, 2009). In 2007, the victim moved into an Elmhurst, Illinois apartment complex with her fiancé and her daughter. Her fiancé soon became abusive, and she ended the relationship. He became upset, produced a gun, and threatened to shoot himself and her. She called police to remove him, obtained an order of protection, and removed him from the lease with the consent of building management. When she attempted to pay her rent, however, building management told her that she was being evicted because "anytime there is a crime in an apartment the household must be evicted." With the help of the Sargent Shriver National Center on Poverty Law, she filed a complaint against the management company for sex discrimination under the Fair Housing Act.

Transfer Cases. Victims will also sometimes request transfers within a housing authority in order to escape an abuser. Two recent cases have challenged the denial of these transfers as sex discrimination under the Fair Housing Act, with mixed results.

Blackwell v. H.A. Housing LP, Civil Action No. 05-cv-01225-LTB-CBS (D. Colo. 2005). The victim's ex-boyfriend broke into her apartment and, over the course of several hours, raped, beat, and stabbed her. She requested a transfer to another complex. Building management refused to grant her the transfer, forcing her and her children into hiding while police pursued her ex-boyfriend. With the help of Colorado Legal Services, the victim filed a complaint in federal court, alleging that the failure to grant her transfer request constituted impermissible discrimination on the basis of sex based on a disparate impact theory. The case eventually settled. The landlord agreed to institute a new domestic violence policy, prohibiting discrimination against domestic violence victims and allowing victims who are in imminent physical danger to request an emergency transfer to another Section 8 property.

Robinson v. Cincinnati Metropolitan Housing Authority, Case No. 1:08-CV-238 (S.D. Ohio 2008). The victim moved into a Cincinnati public housing unit with her children in 2006. She began dating a neighbor, who physically abused her repeatedly. When she tried to end the relationship, he beat her severely and threatened to kill her if she ever returned to the apartment.

She obtained a protection order and applied to the Cincinnati Metropolitan Housing Authority (CMHA) for an emergency transfer, but was denied. The victim was paying rent on the apartment but lived with friends and family for safety reasons. With the help of the Legal Aid Society of Southwest Ohio, the victim filed a complaint against CMHA in federal court, alleging that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, CMHA intentionally discriminated against her on the basis of sex. The court denied her motion for a temporary restraining order and preliminary injunction, finding that CMHA policy allows emergency transfers only for victims of federal hate crimes, not for victims of domestic violence. The court also distinguished cases of domestic violence-based eviction from the victim's case,²⁷ saying that CMHA did not violate her rights under the FHAct by denying her a transfer.

VI. Practical Considerations When Working with a Victim of Domestic Violence

When working with a victim of domestic violence, an investigator must be sensitive to the victim's unique circumstances. She is not only a potential victim of housing discrimination, she is also a victim of abuse. Often, a victim who is facing eviction or other adverse action based on domestic violence also faces urgent safety concerns. She may fear that the abuser will return to harm her or her children. An investigator should be aware of resources available to domestic violence victims and may refer a victim to an advocacy organization or to the police.²⁸ Investigators should also understand that a victim may be hesitant to discuss her history. Victims are often distrustful of "the system" after negative experiences with housing authorities, police, or courts. In order to conduct an effective investigation, investigators should be patient and understanding with victims and try not to appear judgmental or defensive.²⁹

VII. Conclusion

The Violence Against Women Act provides protection to some victims of domestic violence who experience housing discrimination but it does not protect them from discrimination based on sex or another protected class. Thus, when a victim is denied housing, evicted, or has her assistance terminated because she has experienced domestic violence, we should investigate whether that denial or other activity violates the Fair Housing Act. Victims may allege sex discrimination, but may also allege discrimination based on other protected classes, such as race or national origin.

Questions regarding this memorandum should be directed to Allison Beach, Office of the Deputy Assistant Secretary for Enforcement and Programs, at (202) 619-8046, extension 5830.

²⁷ In its order denying Robinson's request for a temporary restraining order and a preliminary injunction, the court cites *Bouley, Lewis, Warren, and Alvera* as cases that "recognized that to evict the women in these situations had the effect of victimizing them twice: first they are subject to abuse and then they are evicted." Order at 6.

²⁸ Nationwide resources include the National Domestic Violence Hotline, at 1-800-799-SAFE(7233) or www.thehotline.org, and www.womenslaw.org. Either resource can refer victims to local advocates and shelters and provide safety planning advice.

²⁹ For more advice on working with domestic violence survivors, see Loretta M. Frederick, *Effective Advocacy on Behalf of Battered Women*, The Battered Women's Justice Project, available at http://www.bwjp.org/files/bwjp/articles/Effective_Advocacy_Battered_Women.pdf.

HOUSING JUSTICE

National Housing Law Project

Newsletter November 2014

HUD Issues Discrimination Charge Against Landlord for Trying to Evict Survivor Because of Attack

On October 31, 2014, the U.S. Department of Housing and Urban Development announced that the agency had issued a charge of discrimination (“charge”) against a Maryland landlord for attempting to evict a domestic violence survivor because of the violence committed against her. Specifically, HUD alleges that the landlord discriminated against the survivor on the basis of sex, in violation of the Fair Housing Act and HUD regulations.

Background

The Attack

The domestic violence survivor rented an apartment with a Section 8 voucher beginning in 2007. She resided there with her two sons, aged 4 and 18. In 2012, the survivor’s boyfriend stabbed her and her 18-year-old son. As a result of their injuries, the survivor and her older son required hospitalization. In fact, the survivor had to stay at the hospital for several days.

While the attack was ongoing, shots were also fired near the survivor’s apartment. The HUD charge suggests that the individual who fired the weapon was not the perpetrator, nor was that individual a guest of the survivor or her older son. It is unclear from the public version of the HUD charge whether the gunfire was at all related to the domestic violence incident.

Police arrested the perpetrator at the scene of the attack. Eventually, a local court convict-

Resources

Charge of Discrimination, *HUD v. Southgate Apartment Co., LLP et al.*, FHEO No. 03-13-0007-8 (Oct. 30, 2014).

HUD, *HUD Charges Owner of Maryland Housing Complex With Discriminating Against Victim of Domestic Violence*, HUD No. 14-137 (Oct. 31, 2014), available at: http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-137 (Press release includes a link to the discrimination charge.)

ed the perpetrator of reckless endangerment; the court also concluded that the attack constituted a crime involving domestic violence.

Attempted Eviction

After returning home, the survivor’s landlord served her with a 30-day notice to vacate her residence. The notice cited the survivor’s “domestic issues” as well as the fact that weapons had been discharged on the date of the attack. The notice cited several lease provisions that the survivor had presumably violated, including a requirement to supervise family members and other visitors such “that their conduct [would] not disturb others.” Another lease section cited in the notice prohibited “illegal pursuits or purposes” on

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the property.

Advocate's response

The survivor and her family did not comply with the 30-day notice, and remained in their unit. The landlord then sent a follow-up letter threatening to refer her file to the landlord's attorneys if the family did not leave the unit within four days. The survivor then obtained an attorney, who wrote a letter to the landlord's counsel. The letter advised the landlord that survivors of domestic violence are protected by both state and federal law.

Additionally, the letter noted that because the survivor was a Section 8 voucher holder, a HUD-required lease addendum included federal legal protections. Along with the letter, the survivor's lawyer included a copy of the lease addendum, which cited HUD regulations regarding the Violence Against Women Act (VAWA). These regulations state that "[c]riminal activity directly relating to abuse" committed against the tenant or a tenant's family members generally cannot constitute grounds for eviction.

However, the regulations include a narrow exception where the survivor may be evicted if the tenancy causes an "actual and imminent threat" to residents or housing provider employees. Even where such a threat exists, the regulations require that a landlord only evict a survivor as a last resort such that "no other actions" could be taken "to reduce or eliminate the threat." (**Note:** Advocates who work with survivors of domestic violence, dating violence, sexual assault, and stalking should note that the HUD regulations discussed in this article reflect protections from VAWA 2005; however, as HUD has not yet issued VAWA 2013 regulations, the 2005 regulations remain in effect.) The survivor's attorney also informed the landlord that the survivor and her family would remain in the unit, and asked that the landlord reevaluate its decision to end the survivor's tenancy.

Eventually, the landlord refused to renew the survivor's lease, and then proceeded to file an

action in state court against her for breach of her lease. The survivor filed a fair housing complaint with HUD, whereupon the landlord decided not to pursue the court case.

HUD Charge of Discrimination

After investigating the fair housing complaint, HUD decided to issue its charge of discrimination. A charge means that HUD has determined that "reasonable cause exists to believe that a discriminatory housing practice has occurred." The charge includes allegations that the landlord discriminated against the survivor on the basis of her sex. Specifically, the charge alleges that a male tenant had a son who was arrested for armed robbery. Despite these alleged criminal offenses by the son, the male tenant was not told to vacate his unit. Instead, the landlord simply banned the son from the premises. Thus, the charge alleges that the landlord discriminated against the survivor by treating her differently than the male tenant regarding criminal activity by someone associated with the household. In the charge, HUD asks for an order to be issued that would (1) declare that the landlord violated the Fair Housing Act; (2) prevents the landlord from engaging in such discriminatory activities in the future; and (3) award damages to the survivor and her family members.

Now that the charge has been filed, the parties will have the matter heard by an administrative law judge. However, this could change if one of the parties decides to have the matter heard in a federal court.▪

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NHLP State Law Compendium

This resource is a compilation of state and local housing protections for domestic violence survivors. The compendium is available at: <http://nhlp.org/files/CombinedD-HousingStateLawCompendium.pdf>

HOUSING JUSTICE

National Housing Law Project

Newsletter October 2014

Borough Repeals Ordinance Penalizing Survivors Who Called Police

The Borough of Norristown, Pennsylvania has repealed a local law that imposed penalties on landlords with tenants who called the police too many times within a certain period. The ordinance did not contain an exception for domestic violence survivors seeking police assistance, and encouraged landlords to evict tenants seeking help from the authorities.

A domestic violence survivor challenged the ordinance in court. After the initial court case was filed, the Department of Housing and Urban Development (HUD) filed its own Secretary-initiated administrative complaint, due to the law's impact on survivors. In order to settle both of these actions, Norristown has entered into two agreements: the first with the survivor, and the second with HUD. The following article briefly summarizes these two agreements.

Background

Norristown had an ordinance that would penalize landlords of properties where the police was called three times over a span of four months for "disorderly behavior" (known as the "three-strikes" rule). Such conduct included calls related to domestic violence.

Lakisha Briggs, a domestic violence survivor, called the police seeking protection from an abuser on several occasions. The police began assessing "strikes" against Ms. Briggs, such that her landlord would be penalized if she kept calling the police. According to the complaint filed in court, the police began counting strikes because they were "tired of

Resources

ACLU Women's Rights Project, Press Release, "Pennsylvania City Agrees to Repeal Law that Jeopardizes Safety of Domestic Violence Survivors" (Sept. 8, 2014), <https://www.aclu.org/womens-rights/pennsylvania-city-agrees-repeal-law-jeopardizes-safety-domestic-violence-survivors>.

ACLU Women's Rights Project, "Victory! Town Will No Longer Treat Domestic Violence Victims as Nuisances" (Sept. 8, 2014), <https://www.aclu.org/blog/womens-rights/victory-town-will-no-longer-treat-domestic-violence-victims-nuisances>.

HUD, Press Release, "HUD and Philadelphia-Area Borough Settle Allegations of Housing Discrimination Against Victims of Domestic Violence" (Oct. 2, 2014), http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2014/HUDNo_14-121 (includes link to the Conciliation Agreement).

Briggs v. Norristown, 2:13-cv-02191-ER, Amended Complaint (Apr. 29, 2013), available at: https://www.aclu.org/files/assets/2013.04.29_-_verified_first_amended_complaint.pdf

The Times Herald, "\$495k court settlement with ACLU, Norristown resident approved by council," <http://www.timesherald.com/general-news/20140902/495k-court-settlement-with-aclu-norristown-resident-approved-by-council>

responding to Ms. Briggs' previous calls to the police." Out of fear of losing her housing, Ms. Briggs did not call the police for assistance. As a result, she suffered extensive injuries by her abuser, and had to

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be hospitalized. In spite of these injuries, the borough repeatedly tried to compel Ms. Briggs' landlord to evict her, against the landlord's wishes. The ACLU brought suit on behalf of Ms. Briggs, asserting that the ordinance was unlawful. Ms. Briggs alleged violations of, among other things, the federal Fair Housing Act (FHA). Specifically, Ms. Briggs asserted that the law's impact on survivors of domestic violence disproportionately impacted women, in violation of the FHA. The suit also alleged that the ordinance violated the Violence Against Women Act (VAWA), as VAWA provides housing protections for survivors who participate in federally-subsidized housing programs, such as Ms. Briggs' Section 8 voucher. After Ms. Briggs filed her suit, HUD initiated its own complaint on the grounds that the ordinance violated the FHA because of its impact on female survivors. The borough settled both actions.

ACLU Settlement Terms

In order to settle its claims with the ACLU, Norristown agreed to repeal its ordinance. Additionally, the borough will pay \$495,000 to Ms. Briggs and her attorneys. Furthermore, Norristown has agreed to refrain from passing similar ordinances in the future.

HUD Conciliation Agreement Terms

On October 2, 2014, HUD announced that it had entered into a Conciliation Agreement (Agreement) with Norristown that had requirements supplementing those in the ACLU settlement with Ms. Briggs. HUD will monitor the Agreement, which is in effect for two years and requires periodic reporting by Norristown. The Agreement included additional terms, briefly summarized below.

Outreach. Under the Agreement, Norristown must develop an "education and outreach program, including a brochure concerning rights regarding the Fair Housing Act." The brochure must include a statement that the borough "encourages all tenants to call the police when they are in need of assistance and that the Municipality does not discourage victims of crime or disorderly behavior...from calling the police." The brochure must also summarize FHA rights. The Agreement requires Norristown police to provide a copy of the brochure

when responding to certain types of calls; additionally, the borough must provide a copy of the brochure to landlords who are applying for or renewing a rental license.

Furthermore, the Agreement mandates that the town organize an annual community service activity to raise domestic violence awareness, in conjunction with a local domestic violence organization.

Additionally, the Agreement requires that Norristown provide HUD with copies of a published notice alerting the public that the three-strikes ordinance has been repealed.

Training. The Agreement also requires certain town officials and employees (such as police officers) to undergo fair housing training, which will emphasize the topics of sex and disability discrimination. The training provider and curriculum must be approved by HUD in advance. New city councilmembers or certain new borough employees must undergo fair housing training within 90 days of assuming their position. The training must be conducted annually while the Agreement is in effect.

Breach. If Norristown fails to comply with the terms of the Agreement, HUD may refer the case to the Department of Justice, which could then sue the borough in federal court. ■

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Upcoming NHLP Webinar

Please mark your calendar for NHLP's webinar, "Credit History and Housing Access for Domestic Violence Survivors," on October 23, 2014, 2:00 p.m. — 3:30 p.m. EST.

The session will address options for survivors with negative credit history who are seeking to apply for housing. Register online at:

<https://attendee.gotowebinar.com/register/9101743321558457858>

HOUSING JUSTICE

National Housing Law Project

Newsletter January 2014

HUD Seeks Comments on Revising VAWA Certification Form

On December 26, 2013, the Department of Housing and Urban Development's ("HUD") Office of Public and Indian Housing issued a notice in the Federal Register requesting public comments on revising Form HUD-50066, which is expiring on February 28, 2014. Form HUD-50066 is the HUD-approved certification form that survivors of domestic violence, dating violence, sexual assault and stalking can use to certify their status as victims under the Violence Against Women Act (VAWA) and submit to public housing authorities as well as owners and managers of housing subsidized by the Section 8 Housing Choice Voucher Program. This certification allows survivors to claim housing protections afforded by VAWA in public housing and Section 8 voucher units.

The notice indicates that HUD will update HUD-50066 to include only items required by VAWA 2013. At a later date, the agency will issue a new form that will replace HUD-50066 and will be used for all the HUD programs that are covered by VAWA 2013. Among other issues, HUD requests comments pertaining to ways in which the quality, utility and clarity of the form can be enhanced. Comments are due February 24, 2014. HUD's notice is available at <http://www.gpo.gov/fdsys/pkg/FR-2013-12-26/html/2013-30814.htm> ■

Q & A: Applying the Federal Fair Housing Act to Shelters

Shelters and other forms of transitional housing provide critical services to countless individuals and families each day, including survivors of domestic violence and sexual assault. People who are homeless or at risk of becoming homeless must often contend with barriers to finding decent, safe and affordable housing, including housing discrimination. While the federal Fair Housing Act (FHA) prohibits housing discrimination against members of certain protected groups, this law does not explicitly indicate whether it applies to shelters. The following Q&A discusses how federal courts have analyzed the FHA's applicability to shelters.

Q: *What protections does the FHA provide?*

A: The FHA prohibits discrimination in certain housing-related transactions on the basis of race, color, sex, religion, familial status, national origin and disability. Such prohibited discrimination includes both refusing to "sell or rent...or otherwise make unavailable or deny, a dwelling," and discriminating "in the terms, conditions, or privileges of sale or rental of a dwelling" based on one of the characteristics listed above. Because of the language of the statute, a building or structure must be a "dwelling" to receive protection under these FHA anti-discrimination provisions.

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Q & A: Applying the Fair Housing Act to Shelters

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A “dwelling,” as defined by the FHA, is “any building, structure, or portion thereof” that is “occupied as, or designed or intended for occupancy as, a residence by one or more families.” However, the FHA does not define “residence.” Since the statute does not indicate which kinds of buildings or structures are residences, the courts have been left to wrestle with this issue.

Q: Does the FHA apply to shelters?

A: There is no straightforward answer to this question as federal courts do not completely agree on this issue. Courts decide this question on a case-by-case basis, analyzing the specific circumstances at hand.

Relatively few cases actually focus on the specific question of whether shelters are dwellings, and, therefore, covered by the FHA. However, there is some case law on the question of whether other types of structures are “dwellings” for FHA purposes. For example, courts have found the following structures to be dwellings: summer bungalows, cabins housing migrant farmworkers, nursing homes, university student housing, timeshare units and an AIDS hospice. On the other hand, courts have determined that motels, bed and breakfasts and jails are not dwellings. Therefore, advocates seeking to argue that a shelter is covered under the FHA should look at contexts in which courts have analyzed other structures.

As one federal court of appeals noted in *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008), the courts’ view of structures can be characterized as existing on a spectrum. At one end of the spectrum are structures that are clearly “residences” for the purposes of establishing the existence of a “dwelling” under the FHA, such as a house or apartment. At the other end of the spectrum are structures where the occupant establishes a seemingly transient relationship with the structure such that she does not intend to remain there for more than a fleeting period, like a motel. Shelters fall somewhere in the middle of that spectrum.

HUD Reiterates VAWA’s Coverage of HOME-funded Programs

In December 2013, HUD’s Office of Community and Planning Development issued a Question-and-Answer in the HOMEfires newsletter reiterating that HOME-funded projects are covered by the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). Therefore, grantees of the HOME program must be aware of their obligations under the statute. In the newsletter, HUD further summarizes key housing protections of VAWA 2013 and emphasizes that housing providers in HUD-covered programs should not wait on HUD regulations to extend basic VAWA safeguards, such as no eviction or termination of survivors of domestic violence. HUD further reminds housing providers that discriminating against survivors because of their status as victims could lead to a violation under the federal Fair Housing Act. This HOMEfires newsletter is available at <https://www.onecpd.info/resources/documents/HOMEfires-Vol11-No1-Violence-Against-Women-Reauthorization-Act-2013.pdf>

Q: Since a shelter must be a “dwelling” for the FHA to apply, how do courts analyze whether a building/structure meets that definition?

A: Many courts examine the question of whether the FHA applies by using the analysis of the decades-old case *United States v. Hughes Memorial Home*, 396 F. Supp. 544 (W.D. Va. 1975). The home in that case provided dormitory-style housing and facilities for disadvantaged children. However, the home refused to admit African-American children, explicitly denying admission to at least one child because of his race. This discriminatory policy prompted a suit under the FHA. For the

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Hughes court, the definition of “residence” was the deciding factor. The court defined “residence” as “a temporary or permanent dwelling place, abode or habitation to which one intends to return as distinguished from the place of temporary sojourn or transient visit.” (This definition is important because subsequent courts refer to it in their analyses.) The *Hughes* court also referenced how courts often broadly interpreted provisions of the FHA. Generally speaking, a broad interpretation of the FHA results in greater protections. The *Hughes* court determined that the home was in fact a residence, and, therefore, a “dwelling” subject to the FHA.

Some post-*Hughes* courts have adopted a two-part test to determine whether a given facility is a dwelling, asking: (1) whether the facility is meant to house occupants who intend to remain for a substantial period of time, and (2) whether occupants view the facility as a place to which they can return. The Third Circuit Court of Appeals applied this two-part test in determining whether a drug and alcohol treatment center was a dwelling in *Lakeside Resort Enterprises v. Board of Supervisors of Palmyra Township*, 455 F.3d 154 (3d Cir. 2006). In considering the first part of the test, the court determined that the average stay at the treatment center was 14.8 days, usually due to insurance funding caps. However, in the facility’s early days of operation, the average stay was approximately 30 days. The court emphasized the intended length of stay for occupants, concluding that given the circumstances, an average stay of 14.8 days was sufficient for the facility to meet the first part of this test. Regarding the test’s second part, the court found that the treatment facility was a place occupants felt like they could return to, and one that they viewed as their own home. The court noted that occupants received mail, congregated for meals, returned to their rooms at night, hung up pictures and had visitors. Given these circumstances, the court concluded that the facility was a dwelling under the FHA.

In the *Schwarz* case, the court adopted a variation of the above test, considering very similar

factors: (1) the extent to which the occupants treated the structure as a home—by engaging in activities such as cooking their meals, cleaning their rooms, doing their laundry and socializing in common areas; and (2) the length of time an occupant remained in the structure. Occupants treating the structure as a home, as well as staying there for a long period of time, increased the likelihood that the court would find that a structure was a dwelling. Using these factors, the *Schwarz* court concluded that a series of halfway houses also constituted dwellings under the FHA.

Q: When considering whether a given shelter falls under the FHA, what might a court look at?

A: Courts focusing on the applicability of the FHA to shelters have cited factors such as the length of time occupants spend at the shelter, whether the occupants treat the shelter as a home or whether the occupants have another place (aside from the shelter) to go. However, it is worth reiterating that relatively few courts have actually considered this issue as applied to shelters. Courts will likely analyze the specific facts about a given shelter when determining if the FHA applies.

Amount of time at the shelter. One consideration is whether there are limits on the length of time a shelter occupant can stay. In one case, *Intermountain Fair Housing Council v. Boise Rescue Mission Ministries*, 717 F. Supp. 2d 1101 (D. Idaho 2010), a federal district court concluded that an overnight homeless shelter limiting the number of stays to 17 consecutive nights was merely a place of transient sojourn or visit. By contrast, in *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995), another district court concluded that a domestic violence shelter was a dwelling. The court arrived at this conclusion even though occupants could not stay at the domestic violence shelter beyond 120 days, with exceptions made in “extraordinary circumstances.” The *Woods* court stated that it was un-

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convinced that a stay of 120 days constituted a “transient visit.” The court added that the amount of time each occupant stays at the shelter will vary, depending on one’s ability to find permanent housing. Finally, in another case, *Boykin v. Gray*, 895 F. Supp. 2d 199 (D.D.C. 2012), a federal district court refused to conclude that a “low barrier” emergency homeless shelter was not a dwelling. That court referenced the shelter’s lack of time limits and the occupants’ regular use of the shelter.

Treating the shelter as a home. In *Intermountain Fair Housing Council*, the court noted that occupants would sleep in a dormitory-style room, hallway, or other room; were not guaranteed the ability to sleep in the same bed each night; generally were not allowed to remain in the shelter in the daytime; could not leave personal belongings in or personalize a given bed area; and could not receive mail, calls, or guests at the shelter. Ultimately concluding that the shelter was not a dwelling, the *Intermountain Fair Housing Council* court decided that the shelter was not intended to be occupied “for any significant period of time.” However, the D.C. federal district court has also voiced skepticism about whether occupants seeing a shelter as a home should factor into the dwelling analysis. In *Johnson v. Dixon*, 786 F. Supp. 1, 4 (D.D.C. 1991), the district court expressed doubt that an emergency overnight shelter could be a dwelling under the FHA “even if it may seem like home” to the occupants, but did not reach a definitive conclusion on the issue. The *Johnson* court characterized the shelter in that case as merely a place of overnight safety for those with nowhere else to go, even though many of the occupants utilized the shelter for weeks or even months.

Occupants having another place to go. Shelter residents often have no other housing options. This fact could indicate that the shelter is a residence, and, in turn, a dwelling. As the court noted in the *Woods* case, since “the people who live in the Shelter have nowhere else to ‘return to,’ the

Shelter is their residence in the sense that they live there and not in any other place.” *Woods* concluded that the domestic violence shelter at issue constituted a “dwelling.” The federal district court in *Jenkins v. New York City Dept. of Homeless Services*, 643 F. Supp. 2d 507 (S.D.N.Y. 2009), suggested that since the plaintiff had no other place to go, the homeless shelter at issue could be considered a dwelling. However, the Second Circuit Court of Appeals concluded that the district court committed error when it reached the issue of whether the shelter was a dwelling. Additionally, the court in *Intermountain Fair Housing Council* disagreed with the *Woods* analysis and concluded that occupants’ “subjective intent of returning to the shelter” does not outweigh the intended transient nature of the shelter. In *Intermountain*, the court focused on the shelter’s intended use, rather than how the occupants viewed the shelter. The court was unconvinced that a shelter for the homeless is a dwelling “simply because the guests have nowhere else to return to.” Such an interpretation, the court stated, could lead any place occupied by a homeless person to be considered a dwelling. ■

For technical assistance or requests for trainings or materials, please contact:

Karlo Ng, kng@nhlp.org
 National Housing Law Project
 703 Market Street Ste. 2000
 San Francisco, CA 94103
 Phone: (415) 546-7000, x. 3117
www.nhlp.org/OVWgrantees

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HOUSING JUSTICE

National Housing Law Project

Newsletter April 2009

Fair Housing Month

The Fair Housing Act, a landmark piece of civil rights legislation, was signed into law on April 11, 1968. To commemorate this bill, April is celebrated as National Fair Housing Month. The current statute makes it illegal to discriminate against people on the basis of race, color, religion, sex, familial status, disability, or national origin in the housing and rental market. In honor of Fair Housing Month, this newsletter will explain how fair housing laws can help ensure housing rights for victims of domestic violence.

Fair Housing Basics

Fair housing laws prohibit discrimination on the basis of membership in a protected group. Federal fair housing law arises out of Title VIII of the Civil Rights Act of 1968 and the Fair Housing Amendments Act – together, these are called the Fair Housing Act (FHA).¹ Specifically, the Fair Housing Act makes it unlawful to discriminate on the basis of race, color, religion, sex, familial status, disability, or national origin.

Prohibited Discrimination

The Fair Housing Act prohibits two types of discrimination: intentional discrimination and disparate impact. A housing provider intentionally discriminates when she treats people differently explicitly because of their membership in the protected group. Disparate impact discrimination occurs when a policy is neutral on its face, but has a disproportionate impact on a protected group.

Intentional discrimination, in the housing context, may exist in many forms. First, communications that indicate a preference as to a protected group are prohibited. Second, refusal to rent or provide a

1. 42 U.S.C. §§ 3601 *et seq.*

housing benefit because of membership in a protected class is prohibited. Third, a housing provider may not discourage access to the unit or housing benefit. This discouragement may include different treatment in the application process, steering to a certain part of the complex or city, and misrepresentations as to availability of a unit. Fourth, a housing provider cannot offer different terms in agreements, rules, or policies.² Finally, a housing provider is prohibited from harassing or evicting tenants because of their membership in a protected class.

Disparate impact discrimination involves any case in which a policy is neutral on its face, but has a disproportionate impact on a protected group. This form of discrimination will be discussed in more detail in the Domestic Violence and Fair Housing portion of this newsletter.

Coverage

The FHA covers all dwellings, with a few exceptions. A dwelling includes any place that a person lives, including public housing, homeless shelters, hotels, nursing homes, and more. The FHA excludes owner-occupied homes, dwellings with four or fewer units, one of which is owner-occupied, single family homes if the owner does not own more than 3 at one time, certain religious housing, certain housing run by private clubs for their members, and certain housing targeted at senior and disabled populations.

In addition to covering a broad group of dwellings, the FHA covers many points of the housing relationship and process. These points include advertising, application, screening, occupancy, and eviction/termination. Thus, the coverage of the FHA is broad, both in the dwellings covered, and the points at which its protections apply.

2 Unless as a reasonable accommodation for a person with a disability.

In this Issue

Fair Housing Basics
Fair Housing and Domestic Violence
Upcoming Trainings

Domestic Violence and Fair Housing

Domestic violence survivors who do not live in subsidized housing and therefore are not covered by the Violence Against Women Act (VAWA) may still be protected by fair housing laws. Advocates have used the two theories of fair housing, intentional discrimination and disparate impact, to challenge policies unfair to women who are domestic violence survivors.

“[W]omen are five to eight times more likely than men to be victimized by an intimate partner. . .”

State and Local Fair Housing Law

Advocates should note that state and local fair housing law may provide broader and more comprehensive coverage than the federal fair housing law. Thus, advocates representing survivors should determine if their state or local law does cover domestic violence.

Disparate Impact

Disparate impact theory has been used to challenge policies that have the effect of treating women more harshly. Some cases have challenged “zero tolerance for violence” policies that mandate eviction for entire households when a violent act is committed at the unit. It has been argued that such policies have a disparate impact on women, who constitute the majority of domestic violence victims.

Statistics

In order to make a case that the Fair Housing Act protects survivors of domestic violence, one must establish a clear linkage between the domestic violence and membership in a protected class – sex. To establish the linkage, statistical data is crucial. The data must demonstrate that domestic violence is clearly related to the sex of the survivor.

The following statistics help demonstrate the relationship between domestic violence and a person’s sex, for the purposes of the FHA:

- The U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. See U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner*

Violence, 1993-2001 at 1 (Feb. 2003).

- Although women are less likely than men to be victims of violent crimes overall, women are five to eight times more likely than men to be victimized by an intimate partner. Additionally, more than 70% of those murdered by their intimate partners are women. Greenfield, L.A., et al., *Violence by Intimates: Analysis of Data on Crimes by Current or Former Spouses, Boyfriends and Girlfriends*, U.S. Dept. of Justice, Bureau of Justice Statistics, NCJ-167237 (March 1998).
- Women constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat’l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998).

Disparate Impact Cases

The following are some cases that have been filed on behalf of domestic violence survivors, based on the disparate impact theory of fair housing:

- **Lewis v. N. End Vill. et al.**, 07cv10757 (E.D. Mich. 2008): Plaintiff’s ex-boyfriend kicked in door at her apartment, a low-income housing tax credit property. Although Plaintiff had a restraining order, she was evicted for violating the lease, which stated that she was liable for damage resulting from “lack of proper supervision” of her “guests.” Plaintiff argued that the policy of interpreting the word “guest” to include those who enter a property in violation of a restraining order had a disparate impact on women. Case settled. Settlement and pleadings are available at www.aclu.org/fairhousingforwomen
- **Warren v. Ypsilanti Housing Commission**, 02cv40034 (E.D. Mich. 2002): Plaintiff’s ex-boyfriend assaulted her at her public housing unit. The PHA sought to evict the Plaintiff, citing a “one-strike” rule in its lease permitting it to evict a tenant if there was any violence in the tenant’s apartment. Plaintiff argued that because the majority of domestic violence victims are women, the policy of evicting victims based on violence against them constituted sex discrimination in violation of state and federal fair housing laws. The case settled, and the PHA agreed to end its application of the one-strike rule to domestic violence victims. For pleadings, see www.aclu.org/fairhousingforwomen

aclu.org/fairhousingforwomen

- **Alvera v. Creekside Village Apartments, HUD ALJ No. 10-99-0538-8 (2001) (Oregon):** Management company sought to evict a tenant under a “zero tolerance for violence” policy because her husband had assaulted her. HUD found that policy of evicting innocent victims of domestic violence because of that violence has a disproportionate impact on women, and found reasonable cause to believe that plaintiff had been discriminated against because of her sex. Case documents are available at www.aclu.org/fairhousingforwomen

Disparate Treatment Claims

Claims of intentional sex discrimination (also called disparate treatment) have been raised in cases where housing providers treat female tenants differently from similarly situated male tenants. This theory has also been used to challenge actions that were taken based on gender-based stereotypes about battered women.

The following are some examples of disparate treatment claims:

- **Robinson v. Cincinnati Hous. Auth., 2008 WL 1924255 (S.D. Ohio 2008):** Plaintiff requested a transfer to another public housing unit after she was attacked in her home. The PHA denied her request, stating that its policy did not provide for domestic violence transfers. Plaintiff alleged that by refusing to grant her occupancy rights granted to other tenants based on the acts of her abuser, the PHA intentionally discriminated against her on the basis of sex. The court denied her motion for a temporary restraining order and preliminary injunction, and the case is pending.
- **Blackwell v. H.A. Housing LP, 05cv1255 (D. Colo. 2005):** Project-based Section 8 complex denied Plaintiff’s request to transfer to another unit after she was attacked in her apartment by her ex-boyfriend. Plaintiff alleged intentional and disparate impact discrimination on the basis of sex in violation of state and federal fair housing laws. Case settled, with the defendant agreeing to implement a domestic violence policy. Case documents available at www.legalmomentum.org.
- **Bouley v. Young-Sabourin, 394 F. Supp. 2d 675 (D. Vt. 2005):** Plaintiff was evicted after her husband assaulted her. The landlord stated

that plaintiff did not act like a “real” domestic violence victim, and that plaintiff was likely responsible for the violence. Plaintiff alleged that the landlord evicted her because she was a victim of domestic violence, and that this constituted sex discrimination in violation of the Fair Housing Act. The landlord’s motion for summary judgment was denied, and the case settled. Case documents are available at www.aclu.org/fairhousingforwomen.

Conclusion

For cases where VAWA does not provide protection for the housing rights of survivors, the Fair Housing Act may prohibit discriminatory policies a housing provider has in place.

TRAINING

Housing Rights of Survivors with Disabilities

Presented By:

Navneet Grewal, Esq.

Meliah Schultzman, Esq.

National Housing Law Project

THURSDAY MAY 14

1 p.m. to 2:30 p.m. Eastern Standard Time

Register at

<https://www1.gotomeeting.com/register/800574113>

For technical assistance, requests for trainings or materials, or further questions, please contact:

Navneet Grewal, ngrewal@nhlp.org, ext. 3102,
Meliah Schultzman, mshultzman@nhlp.org, ext. 3116
National Housing Law Project
614 Grand Ave. Suite 320
Oakland, CA 94610.
Phone: (510)251-9400
Fax (510)451-2300

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in its Section 8 rental program to determine the cost of utilities. The other costs must be estimated, but efforts should be made to set them as close as possible to the actual costs to be incurred by the family, taking into account the circumstances of each specific purchase.⁷ For example, the PHA should consider the age of the home, since older homes typically require more repair. In addition, maintenance costs for condominium or cooperative units may be provided through a homeowners' association and the costs included in the monthly dues. In these cases, the PHA must consider the homeowners' dues in computing the family's homeownership costs. Obviously, in these cases the actual cost of maintenance and repair should be less. The individual circumstances of the homebuyer should also be considered—a disabled homeowner may incur more monthly maintenance costs than other homeowners because her disability may prevent her from performing maintenance tasks that most homeowners ordinarily perform.

Maintenance, repairs and replacement costs should take into consideration the cost of repainting the house, replacing the roof and other systems, such as electrical, plumbing, heating and air conditioning, as well as appliances, such as washers, dryers, refrigerators and stoves. The replacement costs should be amortized over the expected life of each item and the monthly amortization costs included in the participant's overall monthly housing costs.⁸ Given the substantial cost of owning a home, it is likely that, without consideration of these allowances and actual expenses, lower-income families may not be able to afford to maintain and keep their homes.

Conclusion

PHA should adopt, or be encouraged to adopt, policies and procedures in their Administrative Plans that effectively will protect homeownership voucher participants. At a minimum, PHAs should determine the affordability of each proposed home purchase, routinely investigate participating lender qualifications, and scrutinize the contract-of-sale, financing instruments and other closing papers for abusive terms, conditions and charges. Aggressive PHA review policies and practices will discourage rapacious acts by unscrupulous participants in the home purchase and lending industries while, at the same time, help ensure that Section 8 voucher participants become and remain successful homeowners. Whenever PHAs do not initiate these practices on their own, low-income housing advocates should become involved in the process of drafting local Section 8 homeownership programs and ensure that these policies become included in the program. ■

⁷For an example of a standard schedule of homeownership expenses serving a local area, see the *Section 8 Homeownership Program - Benicia (California) Housing Authority* packet of materials available at www.nhlp.org.

⁸See Letter to Melinda Pacis, Vallejo Housing Authority from NHLP, detailing how to determine and amortize actual costs and the replacement value of household items in a Section 8 homeownership purchase (May 3, 2001)(on file at NHLP).

Domestic Abuse Victim Settles Discriminatory Eviction Claim Favorably

Introduction

In an important victory for victims of domestic violence, a property management company has agreed to stop applying its "zero-tolerance" policy to innocent victims of domestic violence in the five western states where it owns or operates housing facilities (Arizona, California, Hawaii, Nevada and Oregon). The agreement was made as part of a consent decree entered in *Alvera v. The C.B.M. Group, Inc.*, Civil No. 01-857-PA (D. Or., October 2001), a suit initiated by the federal government under the *Fair Housing Act* against the owners of the Creekside Village Apartments, located in Seaside, Oregon, for evicting an innocent victim of domestic violence and refusing to rent her another unit after she forced her abusive husband to vacate their apartment.¹

The case originated out of an August 2, 1999 domestic violence incident, when Ms. Alvera's then-husband physically assaulted her in their two-bedroom apartment at Creekside Village, a 40-unit building financed and subsidized by the Rural Housing Service (RHS) (formerly Farmers Home Administration (FmHA)), an agency within the Department of Agriculture's Rural Development division. No incidents of violence had been reported at the Alvera residence nor were any complaints filed prior to August 2, 1999.

On the day of the assault, Ms. Alvera went to the hospital for treatment, obtained a temporary restraining order, and had her then husband, Mr. Mota, arrested. The restraining order required Mr. Mota to vacate the residence and refrain from all contact with Ms. Alvera. Also, on the same day, she provided a copy of the restraining order to her apartment manager. Two days later, she received a 24-hour notice to vacate her apartment from the manager of Creekside pursuant to the owners' zero-tolerance policy against violence. The notice to Ms. Alvera stated that she was being evicted because "You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted personal injury upon the landlord or other tenants." The notice then cited the August 2, 1999 incident as the sole cause for the termination of her tenancy, with no acknowledgment that Ms. Alvera had been the innocent victim of the inflicted personal injury.

The day she received the eviction notice, Ms. Alvera applied for a smaller, vacant, one-bedroom apartment at Creekside. That application was denied one week later. Because the owner had not commenced an action to evict Ms. Alvera, she continued to live in the two-bedroom unit at Creekside even though her tenancy was terminated and her

¹A press release about the case and links to the complaint and consent decree are available at www.nowldef.org/html/issues/vio/housing.htm.

tender of rent was refused on two separate occasions. Two months later, she applied for the one-bedroom again, and on October 26, 1999, she was offered and signed a new lease agreement for that unit. That new lease agreement was accompanied by a letter from management warning her that she would be evicted if another incident like that of August 2 occurred.

The consent decree is a significant acknowledgment that evicting or otherwise interfering with the tenancies of victims of domestic violence on the basis that they are victims is an unacceptable practice which is discriminatory against women and flies in the face of fair housing laws.

Ms. Alvera filed a discrimination complaint with the Department of Housing and Urban Development's (HUD) office of Fair Housing and Equal Opportunity (FHEO) regarding her treatment by C.B.M., the property's owners. After conducting an investigation, FHEO issued a Charge of Discrimination against the owners. In that charge, FHEO noted that women are approximately eight times more likely than men to be victims of domestic violence and that, nationally, 90 to 95 percent of victims of domestic violence are women. It concluded that C.B.M.'s "no tolerance" policy, which was the basis for her eviction, and its refusal to rent her a new apartment, had an adverse impact based on sex, that it was not justified by business necessity and that it violated the *Fair Housing Act*.²

The Suit and the Consent Decree

When reconciliation attempts failed, Ms. Alvera elected to resolve her claim through a federal civil action. The Department of Justice (DOJ) filed the case against the owners and Ms. Alvera joined the case on her own behalf, represented by attorneys from Legal Aid Services of Oregon, Oregon Law Center, NOW Legal Defense & Education Fund, and the American Civil Liberties Union. Ms. Alvera sued for an injunction, compensatory damages, punitive damages and attorney's fees. Her discrimination claim was predicated on the allegation that, since victims of domestic violence disproportionately are women, the "zero-tolerance" policy discriminated against her because of her gender and thus violated the *Fair Housing Act*.³ She also relied on Rural Development regulations that are

intended to prevent the eviction of innocent members of a household where illegal or violent activity has taken place⁴ and Oregon state law for her other claims for relief.⁵

The Consent Decree, which was entered into approximately four months after the suit was filed, provides Ms. Alvera an undisclosed amount of compensatory damages and, for five years, enjoins Creekside's owners from taking any action leading to the eviction of any person on the basis that such person has been the victim of violence initiated by another person, whether or not the initiating person resides in the tenant's household. It also enjoins the owners from discriminating in any way in the terms, conditions or privileges of a tenancy on the basis that the tenant has been the victim of violence, including domestic violence. Additionally, the Consent Decree requires C.B.M. to notify all of its management-level employees within 30 days that C.B.M.'s policy has changed regarding victims of domestic violence and that no adverse action may be taken against them based on the fact that they have been victims of violence. Within that same 30 days, C.B.M. must review and revise all of its manuals, handbooks and other documents, and post notices of the policy change in each residential rental property it manages. The defendants and all other employees of Creekside Village must also attend a training regarding their responsibilities under federal, state and local fair housing laws, regulations and ordinances within 180 days of the Consent Decree. Finally, C.B.M. is required to maintain all documents pertaining to any eviction of any tenant, at any of its properties, for any reason other than nonpayment of rent.

Conclusion

While the consent decree is a significant acknowledgment that evicting or otherwise interfering with the tenancies of victims of domestic violence on the basis that they are victims is an unacceptable practice which is discriminatory against women and flies in the face of fair housing laws, the FHEO Charge of Discrimination should prove to be a more powerful weapon in similar future cases. Unlike lower court decisions that generally serve only as persuasive authority, the FHEO determination can be used in any court⁶ as evidence that disparate impact on women in a domestic violence situation is a viable theory of discrimination because HUD, which is statutorily charged with enforcing the *Fair Housing Act*, has determined the owners' policy to be discriminatory.

We commend Ms. Alvera for her courage and her attorneys for their hard work in this matter. Additionally, Ellen Johnson of Legal Services of Oregon would like to publicly thank the advocates in the Housing Justice Network for their invaluable support and advice throughout the case. ■

⁴7 C.F.R. part 1930, Exhibit B to subpart C, Ch. XIV(A)(2)(c)(3)(2001).

⁵O.R.S. 659.033(1) and (2).

⁶See, *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984)(where the meaning of a statute is ambiguous and Congress' intent is unclear, courts must defer to the relevant administrative agencies' interpretations of the statutes).

²Specifically, the FHEO found the owners to be in violation of 42 U.S.C. § 3604(a), 24 C.F.R. §§ 100.50(b)(1), (b)(3), 100.60(a) - (b)(2) and (b)(5)(2001).

³42 U.S.C. §§ 3604(a) and (b).



Abused Women: Your Fair Housing Rights

Find more easy-to-read legal information at www.ptla.org

Are you facing eviction, or have you been denied rental housing, because you are being abused?

Sometimes landlords react to domestic violence and sexual assault by taking action against the victim. Sex discrimination in housing is illegal. Most victims of domestic violence are women. So if your landlord takes action against you because of domestic violence, this may also be illegal discrimination.

Here we explain your rights and choices if, after learning that you are being abused, your landlord:

- evicts you,
- denies you a housing benefit, or
- refuses to rent to you.

When we say “landlord,” this includes:

- public housing authorities
- property management companies, and
- private landlords.

Who is protected? Some basic rules

Landlords must treat male and female tenants equally. So, for example, if your landlord does not usually evict tenants who are victims of violent crimes but evicts women who are abused by their spouses, this could be illegal sex discrimination. This would also be a violation of your landlord’s written policy against discrimination, if he

has one. Housing authorities, for example, have these policies.

This means that you may have several choices for taking action:

- ✓ filing an internal complaint with a housing authority,
- ✓ making an administrative claim with a federal or state agency, or
- ✓ bringing a lawsuit in court

Fair Housing laws protect people living in:

- public housing
- houses
- apartments
- condominiums
- trailer parks
- homeless shelters

A few homes are exempt from fair housing laws.

How can I tell if my landlord has done something illegal?

To give you an idea, here are some more examples:



- Your abusive partner lives with you. Your landlord evicts you or takes away your housing voucher because of what the abuser did, but does nothing to the abuser.
- Your landlord has different rules for men and women, where a woman has been in



an abusive relationship or has been sexually assaulted.

- Your landlord learns that you are in an abusive relationship. He puts down women who are abused, or puts you down because you have been abused. Then he evicts you, or refuses to renew your lease, for that reason.
- A landlord refuses to rent to you because he learned from a prior landlord, or in the newspaper, that you had filed for a protection from abuse order against an abuser.
- A landlord harasses you, sexually assaults you, or demands sexual relations for rent.

In every case, you must show that your landlord discriminated against you **because of your sex**.

What can I do if I think a landlord has discriminated against me?

Here are three possible steps you can take. You can do them in any order.

- ✓ File a complaint with the state or federal agency that enforces discrimination laws.

To report discrimination, contact either of these two government offices.

Maine Human Rights Commission

51 State House Station
Augusta, Maine 04333-0051
Phone: **207-624-6050**
TTY/TTD: 207-624-6064



Find “intake” form online at:
www.state.me.us/mhrc/FILING/charge.htm

Time limit: 6 months from the date of the landlord’s illegal action

HUD Office of Fair Housing

Thomas P. O’Neill, Jr. Federal Bldg.
10 Causeway Street, Room 321
Boston, MA 02222-1092

Phone: **1-800-827-5005** or (617) 994-8300
TTY (617) 565-5453



File complaint online at:
www.hud.gov/complaints/housediscrim.cfm

Time limit: 1 year from the date of the landlord’s illegal action.

If you win your case at this level but the landlord still won’t comply, a free lawyer may take your case to court.

For more about how these agencies handle claims, ask for our brochure: “Fair Housing: Your Right to Rent or Own a Home.”

- ✓ Make a complaint under your landlord’s grievance procedure.

This might be the quickest and easiest way to resolve the problem. If you live in Public Housing or Rural Housing (Farmers Home), there should be a grievance procedure for sex discrimination. Other large housing providers may have similar formal complaint procedures.

First, find out whether such a procedure exists.

Second, ask for a written copy of the procedures and read them. Make sure you understand them.

Third, follow the procedures. Be sure to put everything in writing and keep a copy.



- ✓ File a lawsuit in state or federal court.

If you go to court with your complaint, you must do this within **2 years** of the landlord's illegal action. This is difficult, and you would probably need a lawyer to represent you. Lawsuits are expensive and can take years. A lawyer may be willing to take your case on the hope of getting her fees paid by the other side if she wins. But this is not common unless you go through HUD or the Human Rights Commission first (see above).

What if I am afraid to file a formal complaint?

We understand that first you want to protect yourself, and your children, if you have any living with you. You may not want to file a complaint because you are afraid that it will put you in more danger. Here are some more resources that may be able to help you:

A Domestic Violence Project or Sexual Assault Center in your area. Get the local domestic violence hotline number from your telephone book; police, sheriff or 911 emergency number; online at

www.mcedv.org or through your local Pine Tree Legal office. The statewide sexual assault hotline is **1-800-871-7741** .

These groups help women in crisis by

- listening
- supporting
- helping you to sort out your choices
- giving you useful information and referrals

National Law Center on Homelessness & Poverty

1411 K Street, N.W., Suite 1400
 Washington, DC 20005
 Phone: 202-638-2535
 E-mail: nlchp@nlchp.org

They may be able to help you figure out a way to deal with your housing problem without putting yourself in more danger.

For more help and information, contact your local Pine Tree Legal office. Get more fair housing information at www.ptla.org.

Notice



Prepared by Pine Tree Legal Assistance
 July 2004

With special thanks to the National Law Center on Homelessness & Poverty, Domestic Violence Project. This information is based on their research and prior publication.

We are providing this information as a public service. We try to make it accurate as of the above date. Sometimes the laws change. We cannot promise that this information is always up-to-date and correct. If the date above is not this year, call us to see if there is an update.

This information is not legal advice. By sending you this information, we are not acting as your lawyer. Always consult a lawyer, if you can, before taking legal action.

**DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT,
AND STALKING POLICY
AMENDMENT TO EMPLOYEE MANUAL**

Management Systems, Inc., as well as its employees, agents, and assigns, with respect to all of the residential rental properties managed by it, has adopted a Domestic Violence, Dating Violence, Sexual Assault, and Stalking Policy. Among other provisions, the Policy provides:

Management Systems, Inc. will not take any action to evict any person on the basis that such person has been the victim of domestic violence including dating violence, sexual assault or stalking, initiated by another person, whether or not such person is residing in the tenant's household.

Management Systems, Inc. will not discriminate in any way against a person in the terms, conditions, or privileges of his or her tenancy on the basis that such person has been the victim of domestic violence, including dating violence, sexual assault or stalking, initiated by another person, whether or not such person is residing in the tenant's household.

Subject to the property owner's review, adoption and approval, Management Systems, Inc. will provide early lease termination and relocation to eligible tenants.

Management Systems, Inc. will respond to complaints concerning violations of the Policy.

Management Systems, Inc. may use reports of domestic violence, dating violence, sexual assault, and stalking to inform others to the extent reasonably necessary to protect the tenant or others and to comply with this policy, applicable law, or court order, but will not intentionally notify the alleged perpetrator.

A complete copy of the Policy will be given to all tenants and is also available upon request. Tenants with questions about the Policy should be referred to resident managers and the Compliance Department of Management Systems, Inc.

In the case of domestic violence, dating violence, sexual assault, or stalking perpetrated by an employee on the premises, upon review of charge, situation, and process by management the employee shall be subject to immediate termination.

Management Systems, Inc. has created an amendment to the Employee Manual, terms of tenancy and termination of tenancy to reflect the Policy. You are required to sign this form acknowledging receipt of the Domestic Violence, Dating Violence, Sexual Assault, and Stalking Policy and this form shall be placed in your Personnel File.

- * I understand that, should the content of this policy be changed in any way, Management Systems, Inc. may require an additional signature from me to indicate that I am aware of and understand any new policies.

- * I understand that my signature below indicates that I have read and understand the above statements and have received a copy of this Management Systems, Inc. Employee Manual Amendment.

Employee Signature: _____ Date: _____

Witness: _____ Date: _____

August 22, 2008



Re: Illegal Discrimination and Victim of Crime (VOC) Funds

Dear Housing Provider:

I am writing to inform you that it is illegal to refuse to rent to a person on the basis that she has received Victim of Crime (VOC) funds. It is also illegal to refuse to rent to a person on the basis that she was a victim of domestic violence. I am an attorney at the National Housing Law Project, an Oakland agency that provides legal assistance to low-income housing advocates and others who serve the poor.

As you may already know, VOC funds are provided to pay expenses that result when an individual has been the victim of a violent crime. In many cases, victims receive VOC funds to help them relocate to safe, secure housing. It is illegal discrimination to deny a person housing because of her status as a recipient of VOC funds or her status as a domestic violence victim for the following reasons:

1. This action constitutes illegal discrimination on the basis of source of income in violation of the California Fair Employment and Housing Act (FEHA).
2. This action constitutes arbitrary discrimination in violation of the California Unruh Civil Rights Act.
3. It is illegal under the federal Fair Housing Act and the FEHA to deny a person housing on the basis that she is a victim of domestic violence.

It Is Illegal to Discriminate on the Basis of Source of Income

Denying an applicant housing because she received VOC funds is illegal discrimination on the basis of source of income, and is a violation of the California FEHA. California law prohibits an owner of housing or entity engaged in any provision of housing from discriminating against persons based on their source of income. *See* Cal. Gov't Code §12955. "Source of income" means lawful, verifiable income paid to an individual or that individual's representative. A landlord or owner of property may not discriminate against an applicant tenant based on the knowledge that the tenant has a certain source of income. VOC funds are a lawful, verifiable income paid to an individual or that individual's representative. As a result, denying housing to an applicant based on the knowledge that she has received VOC funds is a clear violation of the FEHA and is illegal.

Denying an Applicant Housing Because She Has Received VOC Funds Violates the Unruh Civil Rights Act

Refusing to rent to an applicant on the basis that she received VOC funds constitutes arbitrary discrimination in violation of California's Unruh Civil Rights Act. The Unruh Act prohibits discrimination in housing based on any arbitrary classification. *See* Cal. Civil Code § 51. A

landlord cannot discriminate on the basis of characteristics that bear no relation to the person's ability to be a good tenant. The landlord must demonstrate that there is a legitimate business reason for a policy that denies housing to a particular class of people. The fact that a person has received VOC funds bears no relation on her ability to be a good tenant, and in fact demonstrates that she has a ready source of income to pay for her move-in costs. Additionally, there is no legitimate business reason to deny housing to a recipient of VOC funds, because there is no evidence that receiving these funds affects a person's ability to be a good tenant. As a result, denying housing to a person because she has received VOC funds is a clear violation of the Unruh Act and is illegal.

Denying an Applicant Housing Because She Was a Victim of Domestic Violence Violates Federal and State Fair Housing Laws

Refusing to rent to an applicant on the basis that she was a victim of domestic violence violates federal and state fair housing laws. The federal Fair Housing Act (FHA) and the FEHA prohibit a landlord from discriminating against any person on the basis of sex. Because women have a greater risk of being the victim of domestic violence, the FHA and FEHA protect women from being denied housing based upon their gender when they are victims of domestic violence. The Department of Housing and Urban Development (HUD) and several courts have found that it is illegal to discriminate against domestic violence victims in the terms and conditions of housing. *See HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *Bouley v. Young- Sabourin*, 394 F. Supp.2d 675 (D. Vt. 2005); *Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995). As a result, denying housing to an applicant based on the knowledge that she was a victim of domestic violence violates the FHA and FEHA and is illegal.

If you deny an applicant housing because she has received VOC funds or was a victim of domestic violence, the applicant has several legal remedies, including filing a complaint against you with the Department of Housing and Urban Development (HUD) and the California Department of Fair Employment and Housing (DFEH). You may also be subject to legal action in state or federal court. To avoid liability, you must avoid any action that would deny an applicant housing on the basis that she has received VOC funds or was the victim of domestic violence.

I hope this information has been helpful. If you have any questions, feel free to contact me at the number below.

Best regards,

Meliah Schultzman
National Housing Law Project
614 Grand Avenue Ste 320
Oakland, CA 94610
510-251-9400 x. 3116
mschultzman@nhlp.org



JEFFREY J. MARTIN
DEPUTY DIRECTOR
T/212.549.2615
smartin@aclu.org

January 17, 2007

BY US MAIL AND FACSIMILE

Jacqueline R. Waters
Management Systems Incorporated
163 Madison, Suite 120
Detroit, MI 48226
(p) (313) 967-0790
(f) (313) 967-0972

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
WOMEN'S RIGHTS PROJECT
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2644
F/212.549.2580
WWW.ACLU.ORG

Dear Ms. Waters:

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

DIANE ZACKS
TREASURER

We are writing on behalf of your former tenant, Ms. Tanica Lewis. Ms. Lewis resided with her two children in Northend Village at 925 Hague Street, Apt. 37 in Detroit from July 30, 2005 until March 31, 2006. She moved out involuntarily, on the basis of a notice to quit received from Management Systems Incorporated.

This notice to quit was based upon an incident of domestic violence by Reuben Thomas (Ms. Lewis's former boyfriend), which occurred on March 1, 2006. On that date, Mr. Thomas appeared at Ms. Lewis's home while she was absent from her residence. When he could not gain entry to her apartment, he broke her windows and kicked in her door. Based on this incident, Management Systems Incorporated issued Ms. Lewis a 30-day notice to quit on March 13, 2006, stating that Ms. Lewis had violated that portion of her lease indicating that she would be liable for any damage resulting from her lack of proper supervision of her guests.

On February 24, 2006, however, Ms. Lewis had obtained a personal protection order against Mr. Thomas based on his threats against her. She informed Northend Village management of the order at the time she obtained it. This court order, enforceable by the police, prohibited Mr. Thomas from entering the 925 Hague Street property. When Ms. Lewis learned that Mr. Thomas had come to her home and vandalized it in violation of the protection order on March 1, 2006, she immediately reported this violation to the police, as well as to the Residential Manager of Northend Village. Indeed, Mr. Thomas was ultimately convicted of breaking and entering and ordered to pay restitution for the damaged property. Accordingly, Ms. Lewis did everything within her power to prevent Mr. Thomas from visiting 925 Hague Street and to enforce available

legal remedies against Mr. Thomas when he did so in violation of her personal protection order. As the management of Northend Village was aware at the time of the incident, far from being Ms. Lewis's guest, Mr. Thomas was in fact an individual whom she had gone so far as to legally bar from her home.

On the basis of the notice to quit issued by Management Systems Incorporated, Ms. Lewis left her apartment in Northend Village and thus shouldered moving costs. The apartment to which she was forced to relocate cost approximately \$200 more in rent a month than her previous home. In addition, it was inconveniently located far from her place of employment, in contrast to her home in Northend Village, which was less than ten minutes from her workplace. Because of the move, she was also forced to make new and less desirable childcare arrangements for her youngest daughter; the child's grandmother, who lived within a few blocks of Northend Village, had previously cared for Ms. Lewis's daughter. Most importantly, the notice to quit threatened Ms. Lewis with homelessness at the very moment that she was attempting to protect herself and her children from Mr. Thomas's threatening and dangerous behavior, resulting in significant emotional distress for Ms. Lewis.

As we assume you are aware, both the federal Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*, and the Michigan Eliot-Larsen Act, M.C.L. §§ 37.2501 *et seq.*, prohibit discrimination in rental housing on the basis of sex. These statutes forbid both actions based upon gender stereotyping or animus and those that have a discriminatory impact on women. The eviction of Ms. Lewis was apparently based on gender stereotypes about battered women—namely, the stereotype that if a woman is experiencing domestic violence, it is necessarily her fault, because she must be inviting it or allowing it to happen. In addition, because most domestic violence victims are women, those policies and practices that discriminate against victims of domestic violence have an unlawful disparate impact on women. Management Systems Incorporated's interpretation of the word "guest" to mean those individuals who enter a property uninvited and in violation of personal protection orders constitutes just such a practice.

For just these reasons, courts and agencies considering the question have repeatedly found that housing practices that discriminate against victims of domestic violence unlawfully discriminate on the basis of sex. For instance, in *Bouley v. Young-Sabourin*, 394 F. Supp.2d 675 (D. Vt. 2005), a case in which the ACLU Women's Rights Project appeared first as amicus and then as plaintiff counsel, the district court denied defendant's summary judgment motion in a sex discrimination Fair Housing Act claim, based on plaintiff's

showing that less than 72 hours after her husband assaulted her, her landlord issued her a notice to quit. Shortly after this ruling, the case settled with an award of damages and attorneys' fees. *See also Winsor v. Regency Property Mgmt.*, No. 94 CV 2349 (Wis. Cir. Ct. Oct. 2, 1995) (finding discrimination against domestic violence victims had a discriminatory effect on women in violation of state fair housing law) (attached).

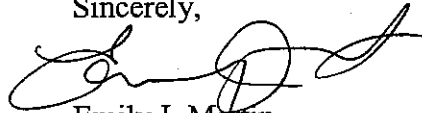
Similarly, in a federal case in Oregon litigated by the ACLU Women's Rights Project, the U.S. Department of Housing and Urban Development determined that when an apartment management agency takes action against an individual based upon her status as a victim of domestic violence, it discriminates on the basis of sex, because most victims of domestic violence are women. *See HUD v. CBM Group, Inc.*, HUDALJ 10-99-0538-8, Charge of Discrimination (2001); *see also* 1985 Op. N.Y. Att'y Gen. 45 (1985) (same) (attached). That case resulted in a consent decree, under which the federal government monitored the apartment management corporation for five years to ensure that its practices and policies in relation to victims of domestic violence complied with the Fair Housing Act. In addition, the apartment management corporation was required to pay compensatory damages and attorneys' fees, to refrain from evicting or otherwise discriminating against tenants because they have been victims of violence, and to train its employees about discrimination and fair housing law.

Moreover, it seems unlikely that evicting an tenant for criminal behavior undertaken by an individual whom the tenant not only had not invited to the property, but whom she had legally excluded from her home, complies with the requirement that all Low-Income Housing Tax Credit properties terminate tenancy only for good cause. 26 U.S.C.A. § 42(h)(6)(E)(ii)(I); I.R.S. Rev. Rul. 2004-82, Q&A 5 (2004). Given that the behavior on which the notice to quit was premised cannot reasonably be construed as a violation of Ms. Lewis's lease, the notice to quit amounts to a termination of tenancy without cause.

For this reasons, we believe that your eviction of Ms. Lewis violated federal and state law. Moreover, it forced her and her children from her home at a time of significant emotional trauma. We hope that we can resolve this matter amicably. Therefore, we ask that you reimburse Ms. Lewis and her children for the financial damages occasioned by the move as well as for the significant emotional distress they experienced. We further request that you make available an apartment to Ms. Lewis's family comparable in cost, amenities, and location to the Northend Village unit from which they were terminated and suggest that rent abatement for a period of months may be a method of addressing Ms. Lewis's accrued damages. We understand from

Ms. Lewis that New Center Commons Condominiums and Palmer Court Townhomes may offer such comparable properties. Finally, we request that Management Systems Incorporated amend the discriminatory policy outlined above, to ensure that tenants who are victims of domestic violence are not subject to the sort of preemptory eviction in the absence of good cause that Ms. Lewis experienced. We ask that you or your attorney contact us no later than January 31, 2007, so that we may pursue resolution of this matter.

Sincerely,



Emily J. Martin
Deputy Director
ACLU Women's Rights Project

Lenora M. Lapidus
Director
ACLU Women's Rights Project

Michael J. Steinberg
Legal Director
ACLU of Michigan
60 West Hancock St.
Detroit, MI 48201-1324
(313) 578-6800

cc: Ronald D. Weaver, President
Management Systems, Inc.
14201 W. Eight Mile Road
Detroit, MI 48235
(p) (313) 345-2115
(f) (313) 345-6664

EL,))	
	Plaintiff/Counter-Defendant,)	
)	
	v.)	No.
)	
KB,))	
	Defendant/Counter-Plaintiff.)	

DEFENDANT'S VERIFIED ANSWER

Now comes the defendant, KB, by and through her attorneys, the Legal Assistance Foundation of Metropolitan Chicago, and answers Plaintiff's Complaint as follows:

1. Defendant DENIES that Plaintiff is entitled to possession of the premises located at [].
2. Defendant DENIES that she unlawfully withholds possession of the premises from Plaintiff.
- 2(c). Defendant DENIES that she breached ¶¶ 23(c)(6)(a), 23(c)(9), 10(b)(1), 10(b)(6), 23(c)(3), 23(c)(10), and 10(b)(4) of her lease agreement.
3. Defendant ADMITS that Plaintiff claims possession of the subject premises.

WHEREFORE, Ms. B respectfully requests that this Honorable Court dismiss Plaintiff's forcible action with prejudice, and grant such other relief as may be proper and just.

DEFENDANT'S FIRST AFFIRMATIVE DEFENSE

As her first affirmative defense, Ms. B contends that Plaintiff violated the Fair Housing Act's prohibition against sex discrimination by terminating her tenancy on the grounds that she suffered an incident of domestic violence in her apartment. In support of this defense, Ms. B states the following:

1. Since September 1, 2001, Ms. Br has lived alone in the apartment located at [] (the premises) pursuant to a written lease agreement with Plaintiff.
2. This agreement is automatically renewed at the end of each month unless it is terminated for good cause.
3. Ms. B's tenancy is subsidized under a Section 8 project-based rental assistance program, so she pays a reduced rent equal to 30% of her adjusted gross income. Her share of the rent is currently \$145 per month.
4. The rental assistance Ms. B receives runs with her unit, so she will lose it if she is evicted.
5. Ms. B is financially eligible for the Section 8 Program because she receives \$579 per month in disability benefits -- several years ago she suffered a severe head trauma that has affected her memory and ability to concentrate -- and has no other source of income.
6. On or about December 28, 2004, Ms. B's former boyfriend, TH, and his friend, GM, came to her apartment.
7. At some point TH started beating Ms. B. She does not remember making a call for help, but the police eventually came to her apartment with the property manager. TH had already left by the time the police arrived, but his friend GM remained.
8. The police escorted GM from Ms. B's apartment, but she did not press charges against him because he did not beat her.
9. Ms. B subsequently obtained an order of protection against TH, and she has refused to let him or GM into her building since the incident on December 28, 2004.
10. Less than a month after the December 28 incident, Plaintiff served Ms. B with written notice of its intent to terminate her tenancy on the grounds that she had allegedly committed six violations of her lease agreement.

11. In accordance with § 5-12-130(b) of the Residential Landlord and Tenant Ordinance, Municipal Code of Chicago, Title 5, Chapter 12, Plaintiff's notice informed Ms. B of her right to preserve her tenancy by curing the alleged violations within ten days. Exhibit B, at 1.

12. Plaintiff described the first (and most recent) violation as follows:

On or about December 28, 2004, your guest, GM, was taken from your apartment by the Chicago Police Department, in response to your phone request for someone to alert the police because you needed help. The police officer and management came to your unit, and when you answered the door it was obvious that you had been beaten. Your face was swollen, especially your nose, and scratches as well as bite marks appeared to be present. Your guest was escorted from the building and placed on the barred list.

Exhibit B, at 1.

13. In response to Ms. B's request for admissions of fact, Plaintiff conceded that it is trying to evict Ms. B because, *inter alia*, she allowed into her apartment a man who beat her. See Plaintiff's response to Defendant's fourth request for admission of fact, a copy of which is attached as Exhibit C.

14. The overwhelming majority of domestic violence victims are women. In fact, women are eight times more likely than men to be the victims of domestic violence. See Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* February 2003.

15. At all relevant times, Plaintiff was or should have been aware that the overwhelming majority of domestic violence victims are women, and that women are much more likely than men to be the victims of domestic violence.

16. Plaintiff's policy of terminating the tenancy of an innocent victim of domestic violence has a disparate impact on women.

WHEREFORE, Ms. B respectfully requests that this Honorable Court:

- A. Find that Plaintiff discriminated against Ms. B on the basis of her sex -- in violation of the Fair Housing Act, 28 U.S.C. §§ 3604(a) and (b) -- by terminating her tenancy on the grounds that she suffered an incident of domestic violence in the premises; and
- B. Grant such other relief as may be proper and just.

DEFENDANT'S SECOND AFFIRMATIVE DEFENSE

As her second affirmative defense, Ms. B contends that she cured her guests' criminal activity (i.e., physically beating Ms. B) by refusing to let them return to her unit after the incident on December 28, 2005. In support of this defense, Ms. B states the following:

1-11. Ms. B repeats the allegations set forth in ¶¶ 1-11 above.

WHEREFORE, Ms. B respectfully requests that this Honorable Court

- A. Find that Ms. B cured in a timely manner the alleged violation set forth in ¶ 1 of Plaintiff's termination notice; and
- B. Grant such other relief as may be proper and just.

DEFENDANT'S THIRD AFFIRMATIVE DEFENSE

As her third affirmative defense, Ms. B contends that she cured her guests' non-criminal activity (i.e., leaving her unit in disarray) by refusing to let them return to her unit after the incident on December 28, 2005. In support of this defense, Ms. B states the following:

1-11. Ms. B repeats the allegations set forth in ¶¶ 1-11 above.

12. The second and third allegations in Plaintiff's termination notice generally state that Ms. B's unit was not in a safe, sanitary and decent condition on December 28, 2004 (the day she was beaten by TH).

13. To the extent that Ms. B's unit was in disarray on December 28, 2004, TH and GM were responsible for the unit's condition.

WHEREFORE, Ms. B respectfully requests that this Honorable Court

- A. Find that Ms. B cured in a timely manner the alleged violations set forth in ¶¶ 2 and 3 of Plaintiff's termination notice; and
- B. Grant such other relief as may be proper and just.

DEFENDANT'S FOURTH AFFIRMATIVE DEFENSE

As her fourth affirmative defense, Ms. B contends that she cured in a timely manner any lease violation related to problems identified during the housekeeping inspection that Plaintiff conducted on or about November 26, 2004. In support of this defense, Ms. B states the following:

1-11. Ms. B repeats the allegations set forth in ¶¶ 1-11 above.

12. The sixth allegation in Plaintiff's termination notice states that Ms. B's unit failed an annual housekeeping inspection on November 26, 2004 because the door frame had been damaged by her guest, TH.

13. Well before the cure period in this case expired on January 30, 2005, Ms. B repaired (at her own expense) the damage to her door frame that TH caused.

WHEREFORE, Ms. B respectfully requests that this Honorable Court:

- A. Find that Ms. B cured in a timely manner the alleged violations set forth in ¶ 6 of Plaintiff's termination notice; and
- B. Grant such other relief as may be proper and just.

DEFENDANT'S COUNTERCLAIM

Ms. B contends that Plaintiff's attempt to evict her on the grounds that she was the victim of domestic violence violates the Fair Housing Act's prohibition against sex discrimination. In support of this counterclaim, Ms. B states the following:

1-16. Ms. B repeats the allegations set forth in ¶¶ 1-16 of her first affirmative defense.

WHEREFORE, Ms. B respectfully requests that this Honorable Court award her actual and punitive damages pursuant to 42 U.S.C. §§ 3612(o)(3) and 3613(c), and grant such other relief as may be proper and just.

Defendant/Counter-Plaintiff's Attorney

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK: HOUSING PART E
-----X

Metro North Owners LLC,

L&T 79149/08

Petitioner-Landlord

Answer

against-

Sonya Thorpe,

Respondent-Tenant
-----X

SIR OR MADAM:

PLEASE TAKE NOTICE that respondent hereby appears in this proceeding; that the undersigned has been retained as attorney for respondent; and that we demand that you serve all papers upon us at the address stated below.

PLEASE TAKE FURTHER NOTICE that the respondent hereby interposes the following answer to the petition herein:

1. Respondent denies the allegations in paragraph 2, 4,5, 8 and 9 of the petition.
2. Respondent lacks information sufficient to form a belief about the allegations in paragraph 1, 3,6 7, of the petition.
3. Respondent hereby denies the first allegation in the notice of termination.

Respondent did not stab anyone on the date in question, was not charged with a crime on the date in question and was in fact a victim of a crime on that date.

4. Respondent hereby denies the fourth allegation in the notice of termination.

AS AND FOR A FIRST OBJECTION IN POINT OF LAW

5. Ms. Thorpe is a recipient of a section 8 voucher administered by the Department of Housing Preservation and Development (hereafter HPD). HPD pays a portion of Ms. Thorpe' monthly rent and these payments are sent directly to petitioner.

6. Ms. Thorpe is a recipient of public assistance. Each month public assistance pays a shelter allowance directly to petitioner as Ms. Thorpe's portion of the rent.

7. Upon information and belief petitioner has received and accepted rent payments from both HPD and Public Assistance for Ms. Thorpe after petitioner allegedly terminated Ms. Thorpe's tenancy.

8. As a result of this acceptance of rent petitioner has reinstated the tenancy and vitiated the notice of termination.

AND AS FOR A SECOND OBJECTION IN POINT OF LAW

9. Respondent hereby repeats and realleges paragraph 4 above.

10. The grounds contained in the notice of termination are not an acceptable grounds for termination of a section 8 tenancy according to CFR 982.310.

AND AS FOR A FIRST AFFIRMATIVE DEFENSE:

11. Ms. Thorpe is the recipient of a section 8 voucher administered by the Department of Housing Preservation and Development.

12. On November 21, 2006 the police were called to Ms. Thorpe's apartment when she was physically assaulted by John Capers when he did strike her with a closed fist. A police report was filed.

13. On January 10, 2007 Ms. Thorpe again called the police when she was attacked in her apartment building by John Capers. A police report was filed.

14. On February 28, 2007 Ms. Thorpe again called the police when she was assaulted by John Capers and a police report was filed.

15. On March 15, 2007 Ms. Thorpe obtained an order of protection against John Capers due to his repeated physical assaults. The order indicates Mr. Capers is to have no contact with Ms. Thorpe and no contact through third parties. The order of protection was issued through March 20, 2007.

16. Ms Thorpe did provide a copy of this order of protection along with a picture of Mr. Capers to building security and management so that they could prevent him from entering the building. They have failed in this regard.

17. On March 20, 2007 Ms. Thorpe obtained an order of protection against John Capers. This order indicates there is to be no personal contact and no third party contact. The order is valid until March 19, 2012 and was served on Mr. Capers while he was incarcerated.

18. Ms. Thorpe did provide a copy of the March 20, 2007 order of protection to her building security and management along with a picture of Mr. Capers so that they could assist in preventing Mr. Capers from entering the building. They have failed in this regard.

19. On April 1, 2008 Ms. Thorpe was again physically assaulted by Mr. Capers. The police were called and both Ms. Thorpe and Mr. Capers were arrested. All Charges against Ms. Thorpe were dropped and the District Attorney declined to prosecute Ms. Thorpe in any capacity.

20. On April 2, 2008 Ms. Thorpe again obtained a temporary order of protection against Mr. Capers because Mr. Capers was released on bail.

21. Ms. Thorpe provided copies of the April 2, 2008 order of protection to building management and security along with a picture of Mr. Capers.

22. Pursuant to the Violence Against Women Act 205 42 U.S.C. 1437 f. C 9 (B) and (C), it is unlawful for a private landlord to terminate the tenancy of a section 8 tenant based solely on incidents of domestic violence. As this proceeding is based solely on incidents of domestic violence it must be dismissed in it's entirety.

AND AS FOR A SECOND AFFIRMATIVE DEFENSE

23. Respondent hereby reaffirms and realleges the facts in paragraphs (10) through (21) above.

24. The Fair Housing Act makes it unlawful "refuse to sell or rent after the making of a bonafide offer or to otherwise refuse to negotiate for the sale or rental of or otherwise make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status or national origin". 42 USC 3604(a).

25. Terminating the tenancy of a domestic violence victim because of incidents of domestic violence is sex discrimination under the Fair Housing Act. Bouley v. Young 394 F Supp 2d 675 (D. Vt. 2005).

26. This holdover proceeding is based entirely on incidents of domestic violence.

27. Petitioner's attempt to terminate respondent's tenancy based on incidents of domestic violence is sex discrimination and unlawful pursuant to the Fair Housing Act.

AND AS FOR A THRID AFFIRMATIVE DEFENSE

28. Respondent hereby reaffirms and realleges paragraphs (10) through (21) above.

29. The New York City Human Rights Law makes it unlawful to “deny to or withhold from any person or group of persons such a housing accommodation or an interest therein because of the actual or perceived.... gender”.

30. Petitioner's attempt to terminate respondent's tenancy based on incidents of domestic violence is gender discrimination and unlawful pursuant to the New York City Human Rights Law.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

31. The first, second and third allegations in the notice of termination do not state a cause of action for nuisance as a matter of law and consequently the proceeding should be dismissed.

WHEREFORE, respondent respectfully requests that petitioner take nothing by this proceeding, and that the court issue an order: a) dismissing the petition with prejudice b) granting such other and further relief including but not limited to attorney's fees as this court shall deem just and proper.

Dated: New York, New York
September 11, 2008

Respectfully submitted,



Steven Banks, Esq., Attorney in Charge
Gretchen Gonzalez, Esq. of Counsel
Harlem Community Law Offices

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States)
Department of Housing and)
Urban Development, on behalf)
of Tiffani Ann Alvera,)

Charging Party,)

v.)

HUDALJ 10-99-0538-8

The CBM Group, Inc., Karen)
Mock, Inez Corenevsky,)
Creekside Village Apartments,)
Edward MacKay and Dorian)
MacKay,)

Respondents.)

CHARGE OF DISCRIMINATION

I. JURISDICTION

On October 22, 1999, Complainant Tiffani Ann Alvera, an aggrieved person, filed a timely, verified complaint with the United States Department of Housing and Urban Development (hereinafter, "HUD"). Complainant alleges that Respondents, CBM Property Management, Karen Mock, Inez Corenevsky, Creekside Village Apartments, Edward MacKay and Dorian MacKay,¹ the managers and owners of the subject property, discriminated against her by making an apartment unavailable to her and applying different terms and conditions of tenancy to her because of her sex, in violation of the Fair Housing Act, as amended, 42

¹ The complaint also named Tina Williams as a respondent. Ms. Williams is hereby dismissed from this action and, therefore, is not named as a respondent herein.

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U.S.C. §§ 3601-3619 ("the Act"). The subject property is a 40-unit apartment complex. HUD's efforts to conciliate the complaint were unsuccessful.

The Act authorizes issuance of a charge of discrimination on behalf of aggrieved persons following an investigation and a determination that reasonable cause exists to believe that a discriminatory housing practice has occurred. 42 U.S.C. § 3610 (g) (1)-(2). The Secretary has delegated to the Assistant Secretary for Fair Housing and Equal Opportunity the authority to make such a determination. 59 Fed. Reg. 39,955 (Aug. 9, 1994), as modified by 59 Fed. Reg. 46,759 (Sept. 12, 1994). The Assistant Secretary has redelegated this authority to each of the FHEO HUB Directors. 63 Fed. Reg. 11,904 (Mar. 11, 1998). The General Counsel has delegated to the Field Assistant General Counsel the authority to issue such a charge on his behalf. 59 Fed. Reg. 53,552 (Oct. 24, 1994).

The Director of the FHEO HUB for the Northwest/Alaska area has determined that reasonable cause exists to believe that discriminatory housing practices have occurred and has authorized the issuance of this Charge of Discrimination.

II. SUMMARY OF THE ALLEGATIONS IN SUPPORT OF THIS CHARGE

Based on HUD's investigation of the complaint and the attached determination of reasonable cause, the Assistant General Counsel for Northwest/Alaska charges Respondents with violations of the Fair Housing Act, specifically 42 U.S.C. §3604(a) and (b). The following allegations support this Charge of Discrimination.

1. It is unlawful to refuse to rent, to refuse to negotiate for the rental of, or otherwise make unavailable or deny, a dwelling to any person because of the person's sex. 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b) (1), (b) (3) and 100.60. Prohibited actions include evicting a tenant because of the tenant's sex. 24 C.F.R. § 100.60(b) (5).
2. It is unlawful to discriminate against any person in the terms, conditions, or privileges of the rental of a dwelling, or in the provision of services or facilities in connection therewith, because of the person's sex. 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b) (2) and 100.65.

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3. The subject property, which is known as Creekside Village Apartments, is a 40-unit apartment complex located at 1953 Spruce Drive, Seaside, Oregon 97138. The subject property is subsidized by Rural Development funds through the United States Department of Agriculture.
4. At all times relevant herein, Complainant, Tiffani Ann Alvera, a female, was a resident of the subject property.
5. At all times relevant herein, Respondent The CBM Group, Inc. ("CBM"), a California corporation, through its Property Management Division, was the property management company responsible for managing the subject property.
6. At all times relevant herein, Respondent Karen Mock was the resident manager of the subject property and an employee of Respondent CBM.
7. At all times relevant herein, Respondent Inez Corenevsky was the property manager for the subject property and an employee of Respondent CBM.
8. At all times relevant herein, Respondent Creekside Village Apartments, a California Limited Partnership, was the owner of the subject property.
9. At all times relevant herein, Respondents Edward MacKay and Dorian MacKay were the General Partners of Creekside Village Apartments, a California Limited Partnership.
10. In November 1998, Complainant and her husband, Humberto Mota, moved into Apartment 21, a two-bedroom unit at the subject property.
11. On or about August 2, 1999, at approximately 5:30 a.m., Complainant was physically assaulted by her husband in their apartment. Complainant escaped to her mother's apartment in the same complex. Her mother called emergency services, and Complainant was taken by ambulance to the hospital.
12. About 6:00 a.m., Complainant's mother went to Respondent-manager Karen Mock's apartment to inform her of the incident

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and obtain a key to Complainant's apartment so the police could enter.

13. Later, Respondent Mock completed an incident report form, stating that Complainant had been assaulted by her husband and taken to the hospital, and the police had been called. She faxed the report to Respondent-Property Manager Inez Corenevsky.
14. Respondent Corenevsky advised Respondent Mock to serve Complainant with a 24-hour notice of termination of tenancy.
15. The same morning, after Complainant was released from the hospital, she sought and obtained a restraining order against her husband. The order prohibited Mr. Mota from contacting Complainant or coming within 100 feet of her. The order also required that Mr. Mota move from and not return to their residence, Apartment 21 at the subject property.
16. Later on August 2, 1999, Complainant gave the resident manager, Respondent Mock, a copy of the restraining order and requested that Mr. Mota be taken off the lease.
17. Respondent Mock informed Complainant that her supervisor had told her to serve Complainant with a 24-hour notice to vacate because of the domestic violence incident.
18. On August 4, 1999, Complainant was personally served with a 24-Hour Notice terminating her tenancy effective midnight August 5, 1999. The notice stated, "Pursuant to Oregon Landlord/Tenant law, this notice is to inform you that your occupancy will terminate because: You, someone in your control, or your pet, has seriously threatened immediately to inflict personal injury, or has inflicted substantial personal injury upon the landlord or other tenants." The notice further stated, "Specific details: On August 2, 1999, at approximately 6:00 a.m., Humberto Mota reportedly physically attacked Tiffani Alvera in their apartment. Subsequently, Police were called in." The Notice was signed by Respondent Mock as agent for Respondent Creekside Village Apartments.

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19. On August 4, 1999, Complainant submitted an application to rent a one-bedroom apartment at the subject property, as she, living alone, no longer qualified for a two-bedroom subsidized unit. Respondent Mock reluctantly accepted Complainant's application, but did not put her name on the waiting list for a one-bedroom unit.
20. Respondent Mock then informed Respondent Corenevsky that Complainant had applied for a one-bedroom unit. Ms. Corenevsky said she did not want Complainant as a tenant.
21. On or about August 6, 1999, Complainant attempted to pay her August rent, but Respondent Mock refused to accept her rent payment.
22. On or about August 11, 1999, Respondent Mock returned Complainant's rental application to her without a written or verbal explanation for the denial of her application.
23. Respondents also refused to accept Complainant's September rent payment and repeatedly told her that they intended to file an eviction action against her.
24. On or about October 9, 1999, Complainant submitted a second application for a one-bedroom unit. Complainant signed a lease agreement for Apartment 18, a one-bedroom unit, on October 26, effective November 1, 1999. Apartment 18 had been vacant since August 1, 1999.
25. On October 26, 1999, Respondent's attorney wrote a letter to Complainant stating, in part, "As you know, there was a recent incident of violence that took place between you and another member of your household. . . . Your conduct and the conduct of the other tenant would probably have been grounds for termination of your tenancy. . . . This letter is to advise you that if there is any type of reoccurrence of the past events described above, that Creekside would have no other alternative but to cause an eviction to take place."
26. Respondents did not receive complaints from any residents about the August 2, 1999, domestic violence incident nor had they received any complaints about Complainant or Mr. Mota. Respondents had not issued any warnings or notices to

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Complainant or Mr. Mota for rules violations or any other reasons.

27. Complainant's husband, Humberto Mota, was arrested and jailed on August 2, 1999, and purportedly left the country after his release. Complainant has had no contact with Mr. Mota since the domestic violence incident.
28. National and Oregon state statistics show that women are approximately eight (8) times more likely than men to be victims of domestic violence—violence by an intimate partner. Nationally, 90 to 95 percent of victims of domestic violence are women.
29. Respondents' policy of evicting the victim as well as the perpetrator of an incident of violence between household members has an adverse impact based on sex, due to the disproportionate number of female victims of domestic violence.
30. Respondents' policy of evicting the victim of domestic violence because of a violent incident is not justified by business necessity.
31. By terminating Complainant's tenancy at Apartment 21 and denying her application to rent a one-bedroom unit because she was a victim of domestic violence in her apartment at the subject property, Respondents refused to rent or otherwise made a dwelling unavailable to Complainant because of her sex, in violation of 42 U.S.C. § 3604(a); 24 C.F.R. §§ 100.50(b)(1), (b)(3) and 100.60(a)-(b)(2), (b)(5).
32. By adopting and enforcing a facially neutral policy of terminating the tenancy of the victim of domestic violence after an incident of violence between household members, which has a disparate impact on women who are disproportionately the victims of domestic violence, Respondents discriminated against Complainant in the terms, conditions, or privileges of the rental of a dwelling, because of her sex, in violation of 42 U.S.C. § 3604(b); 24 C.F.R. §§ 100.50(b)(2) and 100.65(a).

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33. Complainant Alvera has suffered damages, including economic loss, inconvenience, emotional distress and loss of an important housing opportunity as a result of Respondents' discriminatory conduct.

III. CONCLUSION

WHEREFORE, The Secretary, through the Assistant General Counsel for Northwest/Alaska and pursuant to 42 U.S.C. § 3610(g), hereby charges Respondents with engaging in discriminatory housing practices in violation of 42 U.S.C. § 3604 and prays that an order be issued, pursuant to § 3612(g)(3), that:

- 1. Declares that the discriminatory housing practices of Respondents as set forth above violate the Fair Housing Act, 42 U.S.C. §§ 3601-3619;
- 2. Enjoins Respondents, their agents, employees, successors and assigns, and all other persons in active concert or participation with them, from discriminating on the basis of sex in any aspect of the rental of a dwelling;
- 3. Awards such damages as will fully compensate Complainant Alvera for her economic loss, inconvenience, emotional distress and lost housing opportunity caused by Respondents' discriminatory conduct;
- 4. Awards a civil penalty against each respondent for each discriminatory housing practice; and

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5. Awards such additional relief as appropriate.

Respectfully submitted,

David F. Morado

DAVID F. MORADO
Assistant General Counsel
for Northwest/Alaska

Jo Ann Riggs
JO ANN RIGGS
Associate Field Counsel
U.S. Department of Housing and
Urban Development
Seattle Federal Office Building
909 First Avenue, Suite 260
Seattle, Washington 98104-1000
(206) 220-5190

DATE: April 16, 2001

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART A

-----X

XXXXX,

INDEX NO. L&T XXXXX

Petitioner,

-against-

XXXXX

JOHN DOE and JANE DOE
Brooklyn, NY,

Respondent(s).

-----X

RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

JOHN C. GRAY, ESQ.
SOUTH BROOKLYN LEGAL SERVICES
Brent Meltzer, of Counsel
105 Court Street, 3rd Floor
Brooklyn, New York, 11201
(718) 237-5533

Jennifer K. Brown
Maya Raghu
LEGAL MOMENTUM
395 Hudson Street, 5th Floor
New York, NY 10014
(212) 925-6635

Attorneys for Respondent-Tenant

TO: Tennenbaum & Berger LLP
26 Court Street, Penthouse
Brooklyn, NY 11242
718-596-3800

Attorneys for Petitioner

PRELIMINARY STATEMENT

In this holdover proceeding, Petitioner is attempting to evict Respondent RF, a victim of domestic violence and stalking and a longtime tenant in Petitioner's federally subsidized housing project, for three inter-connected acts of her abusive ex-boyfriend L.E. in April and May 2006 that were either acts of domestic violence or stalking against her, or criminal activity directly related to the domestic violence or stalking. While Petitioner's eviction of Ms. F for the abusive behavior of Mr. E is common among landlords, it violates federal, state and local laws.

First, Congress recently enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 to address this exact situation. This law specifically forbids landlords of federally subsidized housing projects from evicting tenants for acts of domestic violence or stalking against them, or for criminal activity by third parties which is directly related to such violence.

Second, Petitioner's attempt to evict Ms. F, a victim of domestic violence and stalking, also constitutes sex discrimination in violation of the federal Fair Housing Act, the New York State Human Rights Law and the New York City Human Rights Law.

Finally, Petitioner alleges that the eviction is justified by Ms. F's failure to report her abuser on her most recent Section 8 recertification. However, Mr. E has never lived with Ms. F or been a member of her family, and she had no obligation, or indeed, basis, to include him on her recertification form.

Failure to dismiss the Petition and grant Respondent's motion for summary judgment would condone punishing victims of domestic violence for the criminal acts of

their abusers, endorse sex discrimination, and place women like Ms. F in the untenable position of facing homelessness to ensure their safety and that of their family members.

FACTS

The facts pertinent to this motion, which are also set forth in the accompanying affidavit of RF in support of motion for summary judgment, are as follows:

RF moved into _____ in or about May 1996. Her apartment is federally subsidized under the project-based Section 8 program and her share of the rent is \$152.00 per month. *See* Lease Amendment dated September 20, 2006, attached hereto as Exhibit A.

Ms. F lives with her three children: _____. Other than her children, no one else lives or has lived in the apartment with her.

When Ms. F moved into her apartment, she met LE, a tenant who resided at _____, the adjoining building managed by her landlord. In fact, Ms. F's building is commonly referred to as _____ and both _____ are owned by Petitioner and are joined together.

From 1996 through 2000, Ms. F was involved in an intimate relationship with Mr. E and they had a child together, Junior, who was born on January 16, 1997. Despite the fact that they were in a relationship, Mr. E had his own apartment in _____, and therefore each maintained their separate residences and never lived together or were married to each other.

During the time that Ms. F had a relationship with Mr. E, he was verbally and physically abusive towards her. Based in part on the abuse, Ms. F ended the relationship with Mr. E sometime in the year 2000. Unfortunately, even though the relationship had

ended, Mr. E abusive actions did not, and he has continued to abuse, stalk and harass Ms. F.

In 2002, Ms. F was walking down ___ Street in Brooklyn with her friend when they were confronted by Mr. E. Mr. E began screaming and threatening Ms. F and then punched her in the face, causing Ms. F to bleed and both of her eyes to turn black. Ms. F was taken to the hospital for treatment and it was eventually determined that she had a deviated septum from the punch that required surgery in November 2002.

On or about February 2003, Mr. E was evicted from his apartment at ____. but he has continued to be present in the building. Upon information and belief, Mr. E lived at _____ from birth until his eviction, and therefore has many friends and family in the buildings who allowed him access to the buildings even after he was evicted. In addition, the front doors to _____ have not had working locks in many years, so Mr. E was able to gain admittance to the buildings even after he was evicted.

Both prior to and after his eviction, Mr. E would come to Ms. F's door intoxicated and shout obscenities at her and carve these obscenities into her door. In addition, Mr. E would constantly loiter in the front of the building, even after he was evicted. Whenever he saw Ms. F walking into her building, he would yell obscenities at her and otherwise intimidate her. Initially, Ms. F would begin a conversation with a police officer on the street in the hope that this would scare Mr. E away from the front of her building. Eventually, Ms. F was forced to use alternative entrances to her building rather than confront the verbal abuse and on September 12, 2005, she even made a formal complaint to the police.

On or about the last week in April 2006, Mr. E again came to Ms. F's apartment and precipitated a series of acts referenced in Petitioner's court papers. At approximately 4 a.m., Mr. E, apparently intoxicated, began kicking and banging on Ms. F's door demanding to be let into her apartment. She was in the apartment with her three young children and based on the prior abuse, she was afraid to confront him. Instead, Ms. F contacted building security to send someone over to her apartment for assistance.

BR was the building security guard who responded to Ms. F's request for assistance and he confronted Mr. E. He asked Ms. F if Mr. E lived in the apartment or if Mr. E was on the lease. Ms. F stated that he did not live in the apartment and that he was not on the lease. Accordingly, Mr. R stated that if Mr. E did not leave the premises, he would call the police. Mr. R and Mr. E argued. When Mr. E refused to leave, Mr. R called the police and Mr. E left before the police arrived.

Upon information and belief, on or about May 5, 2006, Mr. E came to the buildings on _____ and confronted Mr. R about the incident at Ms. F's apartment in April 2006. After several words were spoken, Mr. E punched Mr. R in the mouth and Mr. R walked away. Mr. E returned shortly thereafter with a gun and proceeded to fire shots at Mr. R, missing each time he fired. Upon information and belief, Mr. E was arrested by the police, and upon his arrest stated that he was Ms. F's spouse and that he lived with her in her apartment.

Almost two and a half months later, Petitioner served a Ten (10) Day Notice of Termination (the "Notice") upon Ms. F seeking her eviction for the actions of Mr. E in April and on May 5, 2006. *See* Notice of Termination, attached hereto as Exhibit B. The Notice erroneously stated that the incidents in late April and May 5

occurred on the same night, and that the incident in April occurred in Ms. F's apartment. In addition, the Notice mistakenly asserted that Mr. E was Ms. F's spouse, member of her household or a guest on the night that he banged on Ms. F's door and also the day that he physically assaulted Mr. R.

The Notice also stated that Ms. F failed to place Mr. E on her Section 8 recertification form. *See* Notice of Termination, attached hereto as Exhibit B. Mr. E has never lived with Ms. F and therefore she had no obligation or basis to place him on her recertification forms. Ms. F has always placed her children, the only people who have ever lived with her, on her recertification forms. Upon information and belief, Mr. E is now living at _____ with his aunt. *See* Lease, attached hereto as Exhibit C.

Prior to commencing this proceeding, Petitioner never once attempted to discuss the matter with Ms. F. After she received the Notice, Ms. F went to the management office to discuss the eviction proceeding, and spoke with JT. Ms. T told Ms. F that she must go to court and that the management office would only discuss rent matters.

On or about August 14, 2006, Petitioner prepared a Notice of Petition and Petition and served them upon Ms. F. *See* Notice of Petition and Petition, attached hereto as Exhibit D. After several adjournments, Ms. F served an Answer to the Petition. *See* Answer, attached hereto as Exhibit E.

Since Mr. E's intimidating behavior in April 2006, he has not returned to Ms. F's apartment. However, she is still fearful of him. Several years ago, Ms. F asked Petitioner's predecessor in interest for a transfer to another building because of Mr. E. She was told that she could only move internally within the building. Ms. F continues to seek a transfer to another building but Petitioner has refused to consider this alternative.

In addition, Petitioner has never taken any steps to address Mr. E's behavior. Petitioner could have banned Mr. E from the buildings after he was evicted or instituted trespass or nuisance actions against him. Banning Mr. E would not prove difficult, since Petitioner hired security for the building at the beginning of 2006 -- the very security Ms. F contacted when Mr. E was banging on her door at 4 a.m. Nevertheless, instead of taking action to deal with the person actually causing problems and committing criminal acts, Petitioner preferred to evict Ms. F.

ARGUMENT

Rule 3212 of the C.P.L.R. provides that a motion for summary judgment shall be granted where "upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." C.P.L.R. § 3212(b). Summary judgment is designed to expedite civil cases, by removing claims that can be resolved as a matter of law from the trial calendar. *Andre v. Pomeroy*, 35 N.Y.2d 361, 362 N.Y.S.2d 131 (1974). Where no triable issue of fact exists, the Court should not be reluctant to employ the remedy of summary judgment. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 585 (1980); *Andre*, 35 N.Y.2d at 361.

To defeat a motion for summary judgment, one opposing the motion must "show facts sufficient to require a trial on any issue of fact." C.P.L.R. § 3212(b). The party in opposition must "produce evidentiary proof in admissible form to require a trial of material questions of fact on which he rests his claim." *Zuckerman*, 49 N.Y.2d at 562, 427 N.Y.S.2d at 598.

I. PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT, PETITIONER MAY NOT TERMINATE MS. F'S TENANCY BASED ON DOMESTIC VIOLENCE OR STALKING AGAINST HER, OR CRIMINAL ACTIVITY BY A THIRD PARTY RELATED TO THE DOMESTIC VIOLENCE OR STALKING.

Petitioner commenced the instant proceeding seeking to evict Ms. F, a tenant in Petitioner's federally subsidized housing project and a victim of domestic violence and stalking, for three inter-connected acts by her alleged "spouse" that occurred during and were related to a "domestic dispute."¹ However, the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005") specifically precludes Petitioner from terminating Ms. F's tenancy based on incidents of domestic violence or stalking against her, or criminal activity by a third party related to such domestic violence or stalking.

Petitioner's response to the domestic abuse and related criminal activity -- eviction of the victim of violence in an attempt to "get rid" of the problem -- is a common one among landlords providing federally subsidized housing, as Congress has recognized. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. §§ 14043e(3) and (4). Congress also found that this response has serious consequences for women and their children who are dealing with violence. *Id.*

In response to this widespread problem, Congress enacted VAWA 2005, which contains provisions that specifically preclude Petitioner from terminating Ms. F tenancy based on incidents of domestic violence or stalking against her, or criminal activity by a third party related to such domestic violence or stalking. VAWA 2005 amended 42

¹ Ms. F has never been married and categorically denies that the individual identified in the Notice of Termination is her husband, a member of her household or was her guest. *See* Affidavit in Support of Motion for Summary Judgment, ¶¶ 8, 9, and 25, ("F Aff."). However, said dispute is immaterial and Petitioner's recitation of the facts may be deemed true solely for the purposes of this motion for summary judgment.

U.S.C. § 1437f to include specific protections for tenants in subsidized housing who are victims of domestic violence, dating violence or stalking. It provides that:

. an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

42 U.S.C. §§ 1437f(c)(9)(B) & (d)(1)(B)(ii). VAWA 2005 also amended the statute so that:

. a criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

42 U.S.C. §§ 1437f(c)(9)(C)(i) & (d)(1)(B)(iii).

According to Petitioner's Notice, there are three inter-related incidents that are the basis for the eviction: 1) the "domestic dispute"; 2) Mr. E's physical altercation with the security guard; and 3) Mr. E's shooting at the security guard. *See* Notice of Termination, attached hereto as Exhibit B. As each incident is either an incident of domestic violence or stalking against Ms. F, or criminal activity by a third party related to such domestic violence or stalking, the protections of VAWA 2005 provide both an affirmative defense to the attempted eviction of Ms. F for any of these incidents, as well as the basis for her counterclaims, and her motion for summary judgment should be granted.

A. Petitioner's Termination of Ms. F's Lease Because of the Domestic Violence and Stalking Against Her is Unlawful Under VAWA 2005.

There is little doubt that the "domestic dispute" mentioned in the Notice as a basis for Ms. F's eviction is an incident of domestic violence and stalking within the meaning of

VAWA 2005. Indeed, that incident was merely the latest instance of a long pattern of domestic violence and stalking by Mr. E against Ms. F. Pursuant to VAWA 2005, “the term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed . . . by a person with whom the victim shares a child in common.” 42 U.S.C. § 13925(6). “Stalking” is defined as “to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person” and in the course of or as a result of such “stalking,” that person or her immediate family are placed “in a reasonable fear of” death, “serious bodily injury,” or “substantial emotional harm.” 42 U.S.C. § 1437f(f)(10).

The person identified in the Notice is LE, the father of Ms. F’s child Junior. On the night identified in the Notice, Ms. F was in her apartment with her three children _____. See Affidavit in Support of Motion for Summary Judgment, ¶20. At approximately 4 a.m., Mr. E, apparently intoxicated, began banging and kicking Ms. F’s door demanding that he be let into the apartment.² *Id.* Ms. F was afraid to open the door and step into the hallway to confront Mr. E, so she called building security to address the situation. *Id.* When security guard BR arrived at her apartment, he confronted Mr. E and asked him to leave the premises. *Id.* at ¶21. Mr. E then argued with Mr. R and left the building after Mr. R called the police.³ *Id.*

Indeed, on the night of Mr. E’s appearance, Ms. F had every reason to be fearful of Mr. E based on their previous interactions. During the time that Mr. E and Ms. F were in an intimate relationship, from 1996-2000, Mr. E verbally and physically abused Ms. F.

² In the Notice, Petitioner asserts that the “domestic dispute” occurred in Ms. F’s apartment. See Notice of Termination, attached hereto as Exhibit B. Ms. F denies that Mr. E was in her apartment that night, but the discrepancy is immaterial to Ms. F’s motion for summary judgment and may be deemed true for the purposes of motion.

³ As discussed in section I.B., *infra*, Mr. E returned to the building approximately one week later to seek revenge on Mr. R for rendering assistance to Ms. F and asking Mr. E to cease and desist his stalking and domestic violence. Mr. E punched Mr. R and subsequently shot at him.

See F Aff. ¶10. Even after their relationship ended in 2000, Mr. E continued to verbally and physically abuse Ms. F, as is common in abusive relationships where the abuser refuses to relinquish control over the abused. *Id.* at ¶12. Despite being evicted from his apartment in the building on or about February 2003, Mr. E continued to sit in front of the entrance to the building with his friends, and would verbally abuse Ms. F whenever he saw her entering the building. *Id.* at ¶18. Just as in the “domestic dispute” incident cited by Petitioner, Mr. E would frequently bang on Ms. F’s door, shout obscenities at her, and carve obscenities into her door while intoxicated. *Id.* at ¶17.

Throughout this period, Petitioner took no action to address the situation, such as barring Mr. E from the building or commencing trespass or nuisance proceedings against Mr. E to keep him from the premises after his eviction.⁴ In fact, Petitioner even denied Ms. F’s request to transfer to another building. *Id.* at ¶31 and 32.

In or about July 2002, Mr. E escalated the level of abuse when he saw Ms. F walking with a male friend on ___ St., whereupon he struck her in the nose after shouting obscenities at her. *Id.* at ¶13. Ms. F was taken to the hospital, and eventually required surgery in November 2002 to repair the damage caused by Mr. E. *Id.* After that incident, Mr. E continued to verbally abuse Ms. F as she was walking into the building and she would be forced to use alternative entrances in order to avoid him. *Id.* at ¶18. This continued pattern of abuse culminated in the April and May 2006 incidents discussed above.

⁴ VAWA 2005 even permits landlords to bifurcate a lease and evict a tenant who is a perpetrator of domestic violence or stalking, while permitting the tenant who is a victim of domestic violence to remain. See 42 U.S.C. § 1437f(c)(9)(C)(ii). Although Mr. E was not listed on Ms. F’s lease, it is notable that Petitioner failed to take advantage of *any* of the numerous available options to address Mr. E’s behavior.

These acts satisfy VAWA 2005's definition of stalking and domestic violence against Ms. F. Petitioner terminated Ms. F's lease due to the "domestic dispute." See Notice of Termination, attached hereto as Exhibit B. Because the "domestic dispute" was the latest in a chain of incidents constituting domestic violence and stalking against Ms. F, Petitioner's eviction is action against a victim of domestic violence and stalking that is unlawful under VAWA 2005. See 42 U.S.C. § 1437f(c)(9)(B). Accordingly, the Petition should be dismissed and Ms. F motion for summary judgment granted as to her VAWA 2005 claims.

B. Petitioner's Termination of Ms. F's Lease Because of Mr. E's Assault on and Shooting at the Security Guard is Unlawful Under VAWA 2005.

In a similar manner, Petitioner's attempt to evict Ms. F for Mr. E's altercations with and shooting at the security guard in May 2006, following the pattern of abuse and the "domestic dispute," is also unlawful under VAWA 2005 as it constitutes an eviction based upon "criminal activity directly related to domestic violence...or stalking." See 42 U.S.C. § 1437f(c)(9)(C)(i).

As discussed previously, Ms. F was fearful of confronting Mr. E when he was banging on her door at 4 a.m. and instead requested the assistance of security, as she had been instructed to do by management. See F Aff. ¶20. Ms. F remained in her apartment until BR, a security guard in the building, arrived to address the situation. *Id.* at ¶21. Mr. R confronted Mr. E and asked him to leave the premises. *Id.* Based on Mr. R's assistance to Ms. F and his request that Mr. E cease and desist his stalking and domestic violence, Mr. E punched Mr. R and subsequently shot at him. *Id.* at ¶23

Both Mr. E's punching and shooting at the security guard were directly related to Mr. E's attempt to gain access to Ms. F's apartment at 4 a.m. the week before. Had Mr. E not attempted to gain access, Ms. F would never have called security. Had Ms. F never called security, Mr. R would never have confronted Mr. E and the ensuing altercations would not have transpired.

Pursuant to VAWA 2005, criminal activity of a third party directly related to domestic violence or stalking engaged in by a person under the control of the abused tenant may not form the basis for the eviction of an abused tenant. Petitioner has violated VAWA 2005 by attempting to evict Ms. F and terminate her tenancy for the criminal activity of Mr. E (a person allegedly under her control), which was directly related to domestic violence and stalking.⁵ Accordingly, the Petition must be dismissed as to these claims and summary judgment entered in Ms. F's favor.

II. PETITIONER'S EVICTION OF MS. F CONSTITUTES SEX DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT, THE NEW YORK STATE HUMAN RIGHTS LAW, AND THE NEW YORK CITY HUMAN RIGHTS LAW.

Petitioner's eviction of Ms. F, a victim of domestic violence and stalking, for the acts of her abuser constitutes disparate impact and intentional sex discrimination in violation of the federal Fair Housing Act, as amended ('FHA'), 42 U.S.C. §§ 3604(a) and (b); the New York State Human Rights Law ('NYSHRL'), N.Y. Exec. Law §§ 296.2-a(a) and (b) and §§ 296.5(a)(1) and (2); and the New York City Human Rights Law ('NYCHRL'), N.Y.C. Admin. Code, §§ 8-107(5)(a)(1) and (2).⁶ The anti-discrimination

⁵ Ms. F denies that Mr. E is a household member, guest or a person otherwise under her control. FAff. ¶25. Assuming either set of facts, Petitioner has violated VAWA 2005, as it is equally clear that evicting Ms. F, a person who had no role in the criminal activity that motivated the eviction, is also impermissible under VAWA 2005.

⁶ Federal precedent interpreting the Fair Housing Act is applicable to housing discrimination claims under the New York State Human Rights Law and the New York City Human Rights Law. *See Tyler v.*

protections of these laws provide both an affirmative defense to Petitioner's attempted eviction, warranting dismissal of this proceeding, and the basis for Ms. F's counterclaims. Because Petitioner cannot meet its burden of demonstrating that its actions were not discriminatory, the Petition should be dismissed and Ms. F's motion for summary judgment should be granted.

A. Evicting Female Tenants For the Criminal Acts of Their Abusers Has a Disparate Impact on Women.

Petitioner has discriminated against Ms. F by evicting her pursuant to a practice that has a disparate impact upon women, thereby violating the FHA, the NYSHRL, and the NYCHRL. In order to establish a prima facie case of disparate impact housing discrimination, the victim of discrimination must show“(1) the occurrence of certain outwardly neutral practices and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the [landlord's] facially neutral acts or practices.” *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 575 (2d Cir. 2003) (elements of disparate impact housing claim under the FHA). *See People of the State of New York v. New York City Transit Authority*, 59 N.Y.2d 343, 349 (1983) (elements of disparate impact employment claim under NYSHRL); N.Y.C. Admin. Code § 8-107(17)(a)(1) (elements of disparate impact claim under NYCHRL).

Here, Petitioner engaged in a facially neutral practice: evicting a tenant living in subsidized housing for violations of her lease due to domestic violence or stalking against her or the criminal acts of an alleged guest, household or family member. The fact that

Bethlehem Steel Corp., 958 F.2d 1176, 1180 (2d Cir. 1992) (“New York courts have consistently looked to federal caselaw in expounding the [state] Human Rights Law”); *Lynn v. Vill. of Pomona*, 373 F. Supp. 2d 418, 434 (S.D.N.Y. 2005) (“The elements of plaintiffs' claims under the NYSHRL and the County Human Rights Law are the same as that under the FHA. Therefore, our above analysis applies equally to those claims....”); *Hughes v. The Lillian Goldman Family, LLC*, 153 F. Supp. 2d 435, 453 n.11 (S.D.N.Y. 2001) (“Stating a housing discrimination claim under the [New York State] HRL or the NYCHRL, however, is substantially similar to stating a housing discrimination claim under the Fair Housing Act.”).

the policy may have been unwritten or a single instance is irrelevant to whether it has discriminatory disparate impact. *See, e.g., Council 31 v. Ward*, 978 F.2d 373, 377 (7th Cir. 1992) (“To the extent that members of a protected class can show significant disparities stemming from a single decision, there is no reason that decision should not be actionable.”); *Winsor v. Regency Prop. Mgmt., Inc.* No. 94 CV 2349 (Wisc. Cir. Ct. Oct. 2, 1995) (holding that a single decision to refuse to rent an apartment to prospective tenants because they were victims of domestic violence sufficient to state a sex discrimination claim under a disparate impact theory).

While facially neutral, it is indisputable that Petitioner’s practice has a disproportionate negative impact upon the protected class to which Ms. F belongs, women. Both national and New York studies confirm that the vast majority of victims of domestic abuse are women. For example, a widely-respected national study conducted by the U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. *See* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (February 2003).

Moreover, women living in rental housing experience intimate partner violence at more than three times the rate of women who own their homes, Callie Marie Rennison & Sarah Welchans, U.S. Dept of Justice, NCJ 178247, *Intimate Partner Violence* at 5 (2000), and women with annual household incomes of less than \$7,500 were nearly seven times more likely than women with annual household incomes of over \$7,500 to experience domestic violence. *Id.* at 4.

Stalking is also a form of violence disproportionately experienced by women: they constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998). Women are more likely than men (59 percent and 30 percent, respectively) to be stalked by current or former intimate partners. *Id.* Significantly, 43% of female victims were stalked by former partners *after* the intimate relationship ended. *Id.* at 6. Similarly, a study found that 89% of the domestic violence homicides committed in New York State from 1990-97 included "indications of prior abuse," while 19% of such homicides included indications of "prior non-physical abuse, such as stalking, telephone harassment and threats." New York State Commission on Domestic Violence Fatalities, *Report to the Governor* at 16 (October 1997).

Many domestic violence and stalking victims, the vast majority of whom are women, lose their housing based on the acts of their abusers. *See* 42 U.S.C. §§ 14043e(3) and (4) (finding women and families "are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence" and noting survey documenting cases where tenants have been "evicted because of the domestic violence crimes committed against [them]"); Public Advocate of New York City, *Safety Shortage: The Unmet Shelter And Housing Needs Of New York City's Domestic Violence Survivors* at 8 (March 2005) ("survivors searching for housing face discrimination from landlords who fear that batterers will find survivors in their new homes and create problems on the premises"); New York City Council, *Report of the Governmental Affairs Division on Int. No. 305* at 2 (Apr. 28, 2004) ("Abusers or stalkers

frequently follow victims to their homes, assault and harass victims in their homes and engage in other behaviors that undermine victims' security in their homes. In addition, victims face the danger of losing secure housing when property owners become aware of the problem. Advocates report that many victims attacked in their homes are served with eviction notices for 'allowing' criminal activity to occur on the premises?").

These statistics demonstrate the discriminatory effect that Petitioner's practice has on women as compared to men. Because women make up the vast majority of domestic violence and stalking victims, a policy that penalizes these victims in particular for the acts of their abusers affects disproportionate numbers of women among Petitioner's tenants. Indeed, the percentage of women victimized by domestic violence and stalking is likely higher among those subsidized housing tenants subject to Petitioner's practice, because, as noted above, women who live in rental housing with low incomes are far more likely to experience abuse than home-owning, more affluent women.

In light of these statistics, several courts and agencies around the country, including in New York, have concluded that housing policies and practices that discriminate against victims of abuse disparately impact women and violate the sex discrimination provisions of fair housing law. The New York Attorney General opined as early as 1985 that denial of rentals to persons based on their status as domestic violence victims has a discriminatory impact on women and therefore violates sex discrimination provisions of the New York State Human Rights Law. *See* Formal Op. No. 85-F15, 1985 N.Y. Op. Atty Gen. 45 (Nov. 22, 1985); *Cox v. Related Companies*, No. 11026/86 (N.Y. Sup. Ct. Monroe Cty Dec. 1, 1986) (order and judgment adopting legal analysis of 1985 N.Y. Op. Atty. Gen. 45). Significantly, in a case similar to the one

at issue, a landlord's policy that required eviction of victims of domestic violence because of an abuser's criminal activity was found to have a discriminatory impact on women under the federal Fair Housing Act. *United States v. CBM Group*, No. HUDALJ 10-99-0538-8 (HUD Ore. Apr. 16, 2001). *See also Winsor v. Regency Prop. Mgmt., Inc.* No. 94 CV 2349 (Wisc. Cir. Ct. Oct. 2, 1995) (holding that under Wisconsin fair housing law, modeled after federal Fair Housing Act, a landlord's single decision to refuse to rent an apartment to prospective tenants because they were victims of domestic violence was sufficient to state a sex discrimination claim under a disparate impact theory); *O'Neil v. Karahlais*, 13 M.D.L.R. 2004 (Mass. Comm'n Against Discrim. Oct. 21, 1991) (same with respect to Massachusetts law).

Since Respondent has established a prima facie case of discriminatory impact, the burden then shifts to Petitioner to demonstrate that its practice of evicting victims of violence for the acts of their abusers is compelled by a legitimate business objective. *See Tsombanidis*, 352 F.3d at 575; N.Y.C. Exec. Law § 8-107(17)(a)(2). A valid business objective defense shows that the challenged practice "bears a significant relationship to a significant business objective." N.Y.C. Exec. Law § 8-107(17)(a)(2). Petitioner cannot demonstrate any legitimate business objective sufficient to justify evicting Ms. F for the violence and criminal acts of her abuser.

Even if Petitioner's actions were motivated by a legitimate business objective, which they are not, many alternative policies were available to accomplish its objectives without discriminatory effects. *See Tsombanidis*, 352 F.3d at 575. First, Petitioner could have implemented the less drastic alternative of simply transferring Ms. F to another property it owned, instead of evicting her. Indeed, Ms. F requested a transfer on

a previous occasion as a way to escape Mr. E's abusive behavior and stalking, but Petitioner denied that request. F Aff. ¶31. Petitioner continued to refuse Ms. F's request for a transfer even after it instituted this proceeding. *Id.* at ¶32.

Second, instead of penalizing a longtime tenant in good standing, Petitioner could have taken action against the actual perpetrator, Mr. E, by barring him from the building or commencing a nuisance or trespass action against him. Although Mr. E continued, even after his 2003 eviction from the building, to loiter outside the building and enter the buildings -- on numerous occasions to harass Ms. F, F Aff. ¶17 and 18 -- at no time did Petitioner ever take steps to prevent Mr. E from entering the property. Petitioner failed to take even minimal steps to ensure its tenants' safety: the building entrance doors have not had locks for many years, *id.* at ¶16, and Petitioner did not hire building security until 2006. *Id.* at ¶33.

Petitioner cannot offer any evidence regarding necessity, cost, inconvenience, or other burdens to explain why it failed to transfer Ms. F, to take steps to bar Mr. E from the property, or to explain why evicting Ms. F was the appropriate action. *See Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148 (S.D.N.Y. 1989) (in Fair Housing Act disparate impact race discrimination case, rejecting defendant landlord's proffered business necessity for rental policy in part because it was not "reasonably necessary"). Petitioner's practice of evicting tenants for domestic violence and stalking against them and the criminal acts of their abusers disparately impacts women in violation of fair housing law. Accordingly, the Petition should be dismissed and Ms. F's motion for summary judgment should be granted.

B. Petitioner Evicted Ms. F, a Victim of Domestic Violence and Stalking, on the Basis of Intentional Sex Discrimination.

Ms. F can establish the elements of a prima facie case of intentional sex discrimination under the FHA, the NYSHRL, and the NYCHRL: she is a member of a protected class, women; she was qualified to rent the housing; she is being evicted; and the eviction occurred under circumstances giving rise to an inference of unlawful discrimination.⁷ *See Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2d Cir. 1979); *Dunleavy v. Hilton Hall Apts. Co., LLC*, 789 N.Y.S.2d 164, 166 (App. Div., 2d Dep't 2005).

Here, Petitioner evicted Ms. F because it chose to believe the claim of a man who had been evicted from its property and had committed a criminal act against one of its employees over the word of Ms. F, a longtime female tenant in good standing. Petitioner's eviction is based on the assumption that Mr. E was Ms. F's household or family member or a guest, and that he resided with her. However, none of those assumptions are true, and the evidence supports the inference that Petitioner's willingness to believe Mr. E and its failure to ascertain the truth before evicting Ms. F was based a discriminatory motive.⁸

⁷ Ms. F need not show that a similarly situated tenant was treated differently, and better, in order to establish her prima facie case of sex discrimination. As the Second Circuit has noted, in some cases there are no persons similarly situated to the individual at issue. *Abdu-Brisson v. Delta Airlines, Inc.*, 239 F.3d 456, 467 (2d Cir. 2001). Accordingly, given the "flexible spirit" of the prima facie case requirement, an individual can create an inference of discrimination by other means. *Id.* at 468.

⁸ Any claim by Petitioner that the eviction was a legitimate nondiscriminatory practice to protect the health and safety of other tenants is significantly undermined by its own failure to address the situation expeditiously. Mr. E is alleged to have punched the building security guard and shot at him on May 5, 2006. Petitioner's ten-day notice of eviction is dated July 13, 2006, more than two months after the criminal act at issue. *See* Notice of Termination, attached hereto as Exhibit B. Petitioner did not file its holdover petition until August 14, 2006. *See* Petition, attached hereto as Exhibit D. Even assuming, *arguendo*, that Mr. E was her guest or household member, which he was not, Petitioner took more than two months to address the situation. If the health and safety of other tenants was in fact a serious concern, and if Ms. F had indeed violated her lease because of the criminal act and failing to report a change in her family composition, Petitioner surely would have acted more quickly to resolve the issue. Significantly,

Having established her prima facie case of intentional sex discrimination, the burden then shifts to Petitioner to demonstrate that Ms. F was evicted for legitimate, non-discriminatory reasons. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003) (applying *McDonnell Douglas* burden-shifting framework to housing discrimination claims brought pursuant to Fair Housing Act and New York State Human Rights Law); *Hughes*, 153 F. Supp. 2d at 453 n.11 (applying *McDonnell Douglas* burden-shifting framework to housing discrimination claims brought pursuant to Fair Housing Act, New York State Human Rights Law, and New York City Human Rights Law). Petitioner here may attempt to meet that burden by proffering two reasons. First, Petitioner may claim that Ms. F violated her lease by “willfully” failing to report a person allegedly residing with her as part of her family composition in violation of HUD regulations. Second, Petitioner may claim that Ms. F and/or “members of [her] household and/or [her] guests and/or persons under [her] control” engaged in criminal activity. *See Notice*.

Ms. F, however, can meet her burden of offering ample evidence to demonstrate that Petitioner’s proffered reasons for eviction are false and mere pretext for unlawful discrimination against a female victim of domestic violence and stalking. *See Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 119-20 (2000) (“[p]roof that the defendant’s explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive”). Therefore, the Petition should be dismissed and her motion for summary judgment should be granted.

Petitioner could have quickly addressed its safety concerns by barring Mr. E from the property and/or taking action against him. However, Petitioner failed to do so, instead penalizing Ms. F.

As previously discussed in section I.A., *supra*, Ms. F is a victim of domestic violence and stalking. Even more importantly, *Petitioner* believed Ms. F to be a victim of domestic violence and/or stalking. The Notice states that Ms. F was involved in a ‘domestic dispute’ in her apartment with someone who was her spouse or a household or family member. *See* Notice of Termination, attached hereto as Exhibit B. This belief that she was a victim of domestic violence and stalking colored *Petitioner’s* perceptions of Ms. F, caused it to impute various harmful gender stereotypes to her, and formed the basis of its discriminatory actions.

Most significantly, *Petitioner* utterly failed to make any effort to ascertain the relevant facts from Ms. F before moving to evict her. *Petitioner* easily could have had a meeting with Ms. F to ascertain whether Mr. E was in fact a member of her family or household or was a guest living with her, and to determine the exact circumstances surrounding the events of April and May 2006. However, *Petitioner* failed to do so, preferring to believe the word of a perpetrator of criminal acts over a longtime female tenant. If *Petitioner* had made any effort, it would have learned that in fact, Mr. E and Ms. F were never married and he was never a member of her household. *F Aff.* ¶8 and 9. The evidence in the record also shows Mr. E was not her “guest.” *Id.* at ¶21 and 25. Furthermore, there is no evidence in the record to support the claim that Mr. E resided with Ms. F. In contrast, Ms. F has stated that Mr. E has never resided with her during the time she lived at _____. *Id.* at ¶8 and 26. During the April 2006 incident, Ms. F told the security officer, BR, that Mr. E did not live with her and he was not on her lease. *Id.* at ¶21.

In short, Petitioner believed that the word of Mr. E, the perpetrator of the abuse and criminal acts on its property, was more credible than that of Ms. F, the victim of violence. After the April and May 2006 incidents, Petitioner accused Ms. F of lying during her HUD recertification process about her family composition and residents as an excuse to evict her. *See* Notice of Termination, attached hereto as Exhibit B. However, it is disingenuous for Petitioner to assert that Ms. F “willfully” failed to report the fact that Mr. E was living with her, since Petitioner never bothered to ascertain whether or not Mr. E was *in fact* her spouse or was residing with her. Tellingly, Petitioner did not make any attempt to learn the truth and simply chose to rely on Mr. E’s self-serving assertion at the time of his arrest, which is unsupported by any evidence. Ms. F had no duty to report Mr. E on her housing recertification and she has produced evidence demonstrating that Mr. E and Ms. F were never married, he was never family or household member or guest, and that he never resided with her.

By refusing to believe Ms. F, holding her responsible for Mr. E’s criminal act and evicting her for it, Petitioner is blaming a female victim for acts of her abuser and denying her access to housing, which constitutes unlawful sex discrimination in violation of federal and state laws. Denying housing to a victim of domestic violence, particularly based on actual or feared acts of the abuser, is a form of sex discrimination in violation of the NYSHRL. *See* Formal Op. No. 85-F15, 1985 N.Y. Op. Atty. Gen. 45 (Nov. 22, 1985) (addressing common stereotypes associated with abused women, finding that “the violent conduct of a spouse or other party should not be conclusively attributed to a battered woman so as to prevent her from obtaining housing;” and finding that a broad policy barring all victims of domestic violence from housing violates N.Y. Exec. Law §§

296.2-a(a) and (b) and 296.5(a)(1) and (2)). *See also Bouley v. Young-Sabourin*, 394 F. Supp.2d 675, 677 (D. Vt. 2005) (denying defendant landlord's motion for summary judgment, finding that plaintiff stated a case of intentional sex discrimination under the Fair Housing Act when, based on status as an abuse victim, her landlord issued an eviction notice less than 72 hours after her husband assaulted her).

Taken together, the evidence at hand demonstrates that purported lease violations were not the true reason for Ms. F's eviction. *See Reeves*, 530 U.S. at 119-20. Because Ms. F has carried her burden of demonstrating intentional sex discrimination in violation of federal, state and local laws, the Petition should be dismissed and her motion for summary judgment should be granted.

III. MS. F HAS NEVER FAILED TO REPORT THOSE LIVING WITH HER ON HER ANNUAL RECERTIFICATION FORMS.

As one of its grounds for eviction, Petitioner alleges that Mr. E resided with Ms. F as a family or household member or guest, and that she "willfully" failed to include Mr. E in her family composition on her most recent recertification as required by Department of Housing and Urban Development ("HUD") rules. Upon information and belief, Petitioner's sole basis for this allegation is a statement made by Mr. E, Ms. F's abuser, when he was arrested after banging on Ms. F's door at 4 a.m. seeking entrance to her apartment and subsequently attacking a security guard.

Ms. F denies that Mr. E has ever lived in her apartment and therefore she has not violated HUD rules by failing to place Mr. E on her family composition. *See F Aff.* ¶26. In fact, Mr. E had his own apartment at the subject premises until February 2003 when he was evicted. *Id.* at ¶14. Upon information and belief, Mr. E lives with his aunt at _____. *See Lease*, attached hereto as Exhibit C.

Ms. F has lived and continues to live only with her three children, _____. F Aff. ¶2. She has never failed to report those living in her apartment on her recertification forms, and accordingly that portion of the Petition must be dismissed and her motion for summary judgment granted.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss the Petition and grant her Motion for Summary Judgment in its entirety.

Date: January 8, 2007
Brooklyn, NY

Respectfully submitted,

JOHN C. GRAY, JR., ESQ.
SOUTH BROOKLYN LEGAL SERVICES
Brent Meltzer, Of Counsel
105 Court Street
Brooklyn, New York 11201
(718) 237-5500

Jennifer K. Brown
Maya Raghu
LEGAL MOMENTUM
395 Hudson Street, 5th Floor
New York, NY 10014
(212) 925-6635

Attorneys for Respondent

To:

Tennenbaum & Berger LLP
26 Court Street, Penthouse
Brooklyn, NY 11242
718-596-3800

Attorneys for Petitioner

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

QUINN BOULEY, on her own behalf :
and as guardian ad litem for :
her minor children, SAGE :
HARPLE and EROS BOULEY-SWEDO : Civil No. 1:03CV320
 :
v. :
 :
JACQUELINE YOUNG-SABOURIN :
_____ :

RULING ON CROSS MOTIONS FOR SUMMARY JUDGMENT
(Papers 46 and 61)

The plaintiff in this civil rights action claims the defendant evicted her from an apartment in violation of the Fair Housing Act of 1968, 42 U.S.C. §§ 3601 et seq. Relying on deposition testimony and other portions of the undisputed record, both parties have moved for summary judgment. Because the Court finds the record contains material factual disputes, and for the reasons set forth below, the Defendant's Motion for Summary Judgment and Plaintiff's Cross Motion for Summary Judgment are DENIED.

Background

On a motion for summary judgment, the moving party has the initial burden of informing the Court of the basis for the motion and identifying the absence of a genuine issue of material fact. See, e.g., Chambers v. TRM Copy Centers Corp., 43 F.3d 29, 36 (2d Cir. 1994). Where, as here, cross motions for summary judgment are supported by affidavits and other documentary evidence, each

party, in opposing the other's motion, must set forth specific facts showing there is a genuine, material issue for trial. See Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522, 526 (2d Cir. 1994). Only disputes over facts which might affect the outcome of the suit under the governing law preclude the entry of summary judgment. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

Upon review of the documentation in the record, and solely for the purpose of deciding the pending motions, the Court sets forth the following. On August 1, 2003, plaintiff Quinn Bouley, her husband, Daniel Swedo, and their two children, rented the apartment upstairs from defendant Jacqueline Young-Sabourin. See Def.'s Statement of Undisputed Facts (Paper 47) at Ex. A. The apartment is located at 63-65 Fairfield Street, St. Albans, Vermont. From August 1, 2003 through October 15, 2003, the plaintiff received no complaints from the defendant related to her tenancy and, in fact, had very little personal contact with the defendant.

On October 15, 2003, at approximately 8:00 p.m., the plaintiff's husband, Daniel Swedo, criminally attacked her. The plaintiff called the police and fled the apartment. St. Albans police arrested her husband and, that night, the plaintiff applied for a restraining order. See Pl.'s Statement of Undisputed Facts (Paper 63) at paras. 15-19. Swedo eventually

pled guilty to several criminal charges related to the incident, including assault.

On the morning of October 18, 2003, the defendant visited the plaintiff's apartment. The plaintiff and defendant dispute the particulars of their conversation; the plaintiff has characterized the discussion as one in which the defendant attempted unsuccessfully to discuss "religion" and "Christianity" with her before declaring "I guess I can't do anything here" and leaving. See Paper 63 at 44. Later that day, the defendant wrote the following letter, in which she asked the plaintiff to leave the premises by November 30, 2003:

Dear Quinn,

The purpose of my visit this morning was to try and work things out between you, your agreement in your lease, and the other tenants in the building. I felt very disappointed in the fact that you started to holler and scream, and threaten me, in my efforts to help you. This could only lead me to believe that the violence that has been happening in your unit would continue and that I must give you a 30 day notice to leave the premises.

Agreement #10 on your lease states that "Tenant will not use or allow said premises or any part thereof to be used for unlawful purposes, in any noisy, boisterous or any other manner offensive to any other occupant of the building." Other tenants, and now myself included, feel fearful of the violent behaviors expressed.

Other issues of the lease have not been kept. I see this as minor and again was in hopes to [sic] work them out with you. #7 No storage shall be kept outside the building or on porches and, in the body of the lease itself, "Tenant shall pay Jacqueline L. Young-

Sabourin or her authorized agents John and Windee Young or Katherine Duggan on the 1st day of the month."

Although I did not see the holes in the wall, several sources have told me that holes have been punched in the walls in the unit. In addition, I gave you permission to repaper the wall in the living room or paint it as you did not like the paper. At this time half of the layers of old paper have been peeled off and the walls are left in bad condition.

I would like to remind you that you signed an Apartment inspection sheet at the time of your rental, and I expect the apartment to be in the same condition when you move out. Daniel has stated that he will work in the apartment after you have moved.

Your 30 day notice will mean that you should leave the premises by November 30, 2003. As stated in your lease, your last months [sic] rent is not covered by your deposit. Cooperation between myself and my tenants would be appreciated up to that time, and repair to the apartment.

Paper 47 at Ex. B.

Discussion

The Fair Housing Act makes it unlawful, inter alia, "[t]o refuse to sell or rent after the making of a bona fide offer, or to otherwise refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604 (a). The plaintiff alleges the defendant unlawfully terminated her lease on the basis of sex and religion. First, she claims the termination was initiated because she was a victim of domestic violence, and second, because she refused to listen to the defendant's attempt to

discuss religion with her after the incident. These claims, if proven, could constitute unlawful discrimination under the Fair Housing Act. Cf. Smith v. City of Elyria, 857 F. Supp. 1203, 1212 (N.D. Ohio 1994)(In a civil rights suit commenced against police department, the court states: "There is evidence in the record from which a jury could find the defendants' domestic disputes policy had a discriminatory impact and was motivated by intent to discriminate against women.").

Claims of housing discrimination are evaluated using the McDonnell Douglas burden-shifting framework. Mitchell v. Shane, 350 F.3d 39, 47 (2d Cir. 2003). "Accordingly, once a plaintiff has established a prima facie case of discrimination, the burden shifts to the defendant to assert a legitimate, nondiscriminatory rationale for the challenged decision. . . . If the defendant makes such a showing, the burden shifts back to the plaintiff to demonstrate that discrimination was the real reason for the defendant's action. . . . Summary judgment is appropriate [only] if no reasonable jury could find that the defendant's actions were motivated by discrimination." Id. (citations omitted).

The plaintiff has demonstrated a prima facie case. It is undisputed that, less than 72 hours after the plaintiff's husband assaulted her, the defendant attempted to evict her. In addition, the record contains evidence which suggests the eviction also may have been prompted by the plaintiff's refusal

to discuss religion with the defendant. See, e.g., Tomka v. Seiler Corp., 66 F.3d 1295, 1308 (2d Cir. 1995) ("As this was the first mention of a termination date, the timing of Snook's letter supports an inference of discrimination sufficient to establish a prima facie case.").

In response, the defendant has presented little evidence of preexisting problems with the plaintiff, as a tenant. In addition, the timing of the eviction, as well as reasonable inferences which a jury could draw from some of the statements in the eviction letter, could lead a reasonable jury to conclude that the real reason for the defendant's actions was unlawful discrimination. See, e.g., Schnabel v. Abramson, 232 F.3d 83, 89 (2d Cir. 2000) ("the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose").

The Cross Motions for Summary Judgment are DENIED. The Clerk is instructed to place this case on the next jury trial calendar.

SO ORDERED.

Dated at Brattleboro, Vermont, this 10th day of March, 2005.

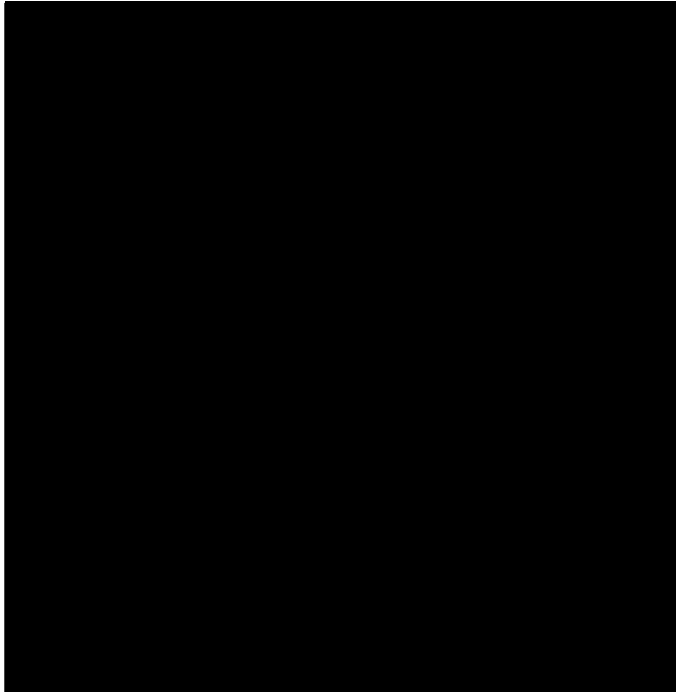
/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge

March 4, 2010

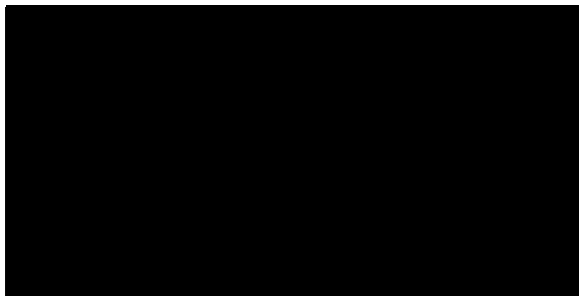
HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: 

1. Complainants



2. Other Aggrieved Persons



3. The following is alleged to have occurred or is about to occur:

Discriminatory refusal to rent.
Discriminatory terms, conditions, privileges, or services and facilities.

4. **The alleged violation occurred because of:**

Sex.

5. **Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):**

[REDACTED]

6. **Respondent(s)**

[REDACTED] Housing and Redevelopment Division

[REDACTED]

7. **The following is a brief and concise statement of the facts regarding the alleged violation:**

The Complainants are [REDACTED] and her adult daughter [REDACTED]. The Respondent is the [REDACTED] Housing & Redevelopment Division (PHA) through which [REDACTED] received a Section 8 Housing Choice Voucher (HCV).

The Complainants rented a dwelling from August 2007 until she vacated the premises after her HCV Voucher was terminated by the Respondent PHA effective March 5, 2009. During the final year of her residency the Complainant alleges that she was visited by a former boyfriend, who is the father of her youngest child, a total of eight to ten days. These visits resulted in several police reports of domestic violence when the Complainant was assaulted.

The Complainants allege that the Respondent PHA, denied their right to appropriate services, terms and conditions because of gender and status as a victim of domestic violence. On or about March 20, 2008, the Complainant requested that the PHA transfer her Housing Choice Voucher to [REDACTED] because she wished to remove the family from the risk of further domestic violence. While the PHA initiated portability with the [REDACTED] Housing Authority the Complainants believed that they needed to get the landlords permission for early termination of the lease agreement. The Complainant and the landlords were not informed, as required under VAWA, that a tenant is permitted to move even if the lease term has not expired. The transfer of the HCV to [REDACTED] was ultimately delayed and the Complainant was not able to move.

In January 2009 the Complainant once again initiated an attempt to transfer her voucher to [REDACTED] after three additional domestic violence incidents, including one incident that was not reported to the police. The PHA required that the Complainant report the third unreported incident to the police department as a precondition for initiating the portability process and allowing the Complainant to move in the middle of a term lease, a violation of VAWA which only requires a single document verifying that there was domestic violence.

On February 4, 2009 the Respondent PHA gave the Complainant a Notice of Program Termination alleging that she permitted the former boyfriend to reside in her dwelling unit proper notification to the PHA. An informal hearing on occurred on February 27, 2009. On 03/03/2009 the Respondent PHA upheld termination of the Complainant's household from the Housing Choice Voucher program effective March 5, 2009. Notice of the informal hearing results were not received until March 5, 2009 by the Complainants attorney.

The Complainant alleges that because of her gender and status as a victim of domestic violence that she was denied impartiality during the informal hearing and was terminated from the Housing Choice Voucher Program. The Complainant alleges that the Hearing Officer relied only upon hearsay evidence as the basis for her decision while the PHA's Administrative Plan states that "hearsay evidence cannot be used as the sole basis for the Hearing Officer's decision."

The Complainant also alleges that she was denied the right to present evidence, question witnesses, and the Hearing Officer did not consider any of numerous findings of fact as presented by the Complainant's two attorneys. The Complainants allege the unauthorized tenant issue was a pretext for discrimination based on gender for seeking a transfer to escape domestic violence and to seeking legal and police protection from the domestic violence at her dwelling. The Complainants also allege the Respondent PHA and the hearing officer ignored the issue of domestic violence during the informal hearing and refused to consider that the Complainant had not been advised of her rights under VAWA.

8. The most recent date on which the alleged discrimination occurred:

March 5, 2009.

9. Types of Federal Funds identified:

None.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Sections 804a or f and 804b or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAKISHA BRIGGS	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 2:13-cv-02191-ER
	:	
BOROUGH OF NORRISTOWN and DAVID R.	:	
FORREST, ROBERT H. GLISSON, RUSSELL J.	:	JURY TRIAL DEMANDED
BONO, WILLIE G. RICHET and JOSEPH E.	:	
JANUZELLI, in their individual and official	:	
capacities	:	
	:	
Defendants.	:	

VERIFIED FIRST AMENDED COMPLAINT

INTRODUCTION

1. This action is brought on behalf of an African-American, female victim of repeated domestic violence, who has periodically needed to rely on the police for protection at her rental home in Norristown, Pennsylvania.

2. Defendants – a Pennsylvania municipality, its Former and Interim Municipal Administrator, Former and Interim Chief of Police, and Municipal Code Manager – have enacted and enforced two consecutive ordinances that authorize them to penalize landlords, and cause those landlords to remove their tenants from their homes, where the tenants have required the assistance of law enforcement for incidents of “disorderly behavior” at their rental properties.

3. Until November 2012, Defendants maintained and enforced Section 245-3 of the Norristown Municipal Code (the “Old Ordinance”) against landlords and tenants in Norristown.

4. The Old Ordinance authorized Defendants *to revoke or suspend a landlord’s rental license and forcibly remove a tenant from any property* where the police have responded to three instances of “disorderly behavior” at the property within a four month period.

5. The Old Ordinance broadly defined “disorderly behavior” to cover any “activity that can be characterized as disorderly in nature” and provided several examples of activities that constituted “disorderly behavior,” including instances of domestic violence.

6. The Old Ordinance vested the Chief of Police with sole discretion to determine whether the activity to which the police respond constituted “disorderly behavior” under this definition.

7. Thus, under the Old Ordinance, “disorderly behavior” could be found in virtually any call to which the police responded, including incidents where the tenant was blameless, reasonable in seeking police assistance, or facing a true emergency, and even where the police responded to a baseless call from a vindictive neighbor.

8. Between April and September 2012, Defendants enforced the Old Ordinance against Plaintiff and Plaintiff’s landlord by revoking Plaintiff’s landlord’s rental license and attempting to remove Plaintiff and her infant daughter from their home, on grounds that the police were called upon one too many times to protect her and her daughter from incidents of domestic violence.

9. In the course of enforcing the Old Ordinance, Defendants assigned three “strikes” to Plaintiff and placed her property on a 30-day probationary period.

10. During this probationary period, Plaintiff was so terrified she would lose her home due to Defendants’ enforcement of the Old Ordinance that she refrained from calling the police during an incident in which she was brutally attacked and almost killed by her former boyfriend.

11. Notwithstanding this violent episode, Defendants proceeded undeterred to take steps to remove Plaintiff from her rental property until Plaintiff’s counsel interceded.

12. In a September 2012 letter, Plaintiff's counsel explained to Defendants how enforcement of the Old Ordinance violated Plaintiff's constitutional rights and demanded that Defendants cease enforcement of the Old Ordinance against Plaintiff and other tenants in Norristown.

13. Following a meeting with Plaintiff's counsel, Defendants acknowledged the constitutional deficiencies of the Old Ordinance and subsequently repealed the Old Ordinance in its entirety, in November 2012.

14. Yet, within two weeks after repealing the Old Ordinance, Defendants quickly proceeded to enact, and ultimately did enact, a nearly identical, replacement ordinance (the "New Ordinance") in December 2012, without ever informing Plaintiff's counsel.

15. The New Ordinance permits Defendants *to assess a series of escalating criminal fines against landlords* of any property, at which, within a four-month period, the police have responded to three instances of "disorderly behavior," including instances of domestic violence.

16. The New Ordinance is substantially similar to the Old Ordinance. While the New Ordinance changes the penalties on landlords for violations thereof (from a suspension or revocation of rental licenses to a series of criminal fines), the New Ordinance has the same adverse impact as the Old Ordinance on tenants in Norristown and continues to suffer from all of the same constitutional and legal failings. Although the New Ordinance purports to target landlords, the New Ordinance directly infringes on Norristown tenants' constitutional rights.

17. Specifically, Defendants' previous enforcement of the Old Ordinance violated, and threatened enforcement of the New Ordinance continues to violate, Plaintiff's rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution, their Pennsylvania constitutional equivalents, and federal and state housing law.

18. Accordingly, Plaintiff brings this action seeking damages for injuries suffered by Defendants' unconstitutional enforcement of the Old Ordinance and to enjoin Defendants from enforcing the New Ordinance.

19. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 3601 *et seq.*

20. Plaintiff seeks declaratory and injunctive relief, as well as compensatory damages, punitive damages and attorneys' fees as provided under 42 U.S.C. § 1988.

JURISDICTION AND VENUE

21. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) & (4).

22. This Court has supplemental jurisdiction over the state constitutional and statutory claims pursuant to 28 U.S.C. § 1367.

23. Declaratory relief is authorized by 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57.

24. Injunctive relief is authorized by Federal Rule of Civil Procedure 65.

25. This Court has personal jurisdiction over Defendants because they are located or reside in the Eastern District of Pennsylvania and/or the events that give rise to this action occurred within the Eastern District of Pennsylvania.

26. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. § 1391(b) in that Defendants are subject to personal jurisdiction within the Eastern District of Pennsylvania and the events that give rise to this action occurred within the Eastern District of Pennsylvania.

PARTIES

27. Plaintiff Lakisha Briggs ("Ms. Briggs") is a 33 year old, African-American, single mother. She is a citizen of the United States and is a resident of Norristown, in Montgomery

County, in the Commonwealth of Pennsylvania. Ms. Briggs has lived in Norristown for 24 years, since she was nine years old, and intends to live in Norristown for the rest of her life.

28. Between November 1, 2010 and February 1, 2013, Ms. Briggs lived on Wayne Avenue, in Norristown.

29. Ms. Briggs currently lives at another rental house in Norristown.

30. Ms. Briggs has two children: a three year old daughter, who lives with Ms. Briggs, and a 21 year old daughter, who lives independently in Philadelphia.

31. Defendant Borough of Norristown (“Norristown” or “the borough”) is a municipal corporation, having the name of “Borough of Norristown,” (*see* Borough of Norristown Home Rule Charter) located in Montgomery County, in the Commonwealth of Pennsylvania, with administrative offices and police headquarters located at 235 East Airy Street, Norristown, PA 19401.

32. Defendant David R. Forrest is the former Municipal Administrator for Norristown and in that position had the responsibility under the Old Ordinance for, among other things, determining whether and when to revoke or suspend rental licenses and whether and when to condemn private property and declare it unlawful to occupy the property as a rental unit. Defendant Forrest had ultimate supervisory authority over enforcement of the New Ordinance. Defendant Forrest maintained an office at the Norristown Municipal Building, 235 East Airy Street, Norristown, PA 19401. Defendant Forrest resigned from his position effective February 28, 2013. Defendant Forrest is currently the City Manager for the City of Canandaigua and maintains an office at 2 North Main Street, Canandaigua, NY 14424.

33. Defendant Robert H. Glisson is the Interim Municipal Administrator and, in this position, has ultimate supervisory authority over enforcement of the New Ordinance. Defendant

Glisson maintains an office at the Norristown Municipal Building, 235 East Airy Street, Norristown, PA 19401. Defendant Glisson assumed his position immediately after Defendant Forrest's resignation.

34. Defendant Russell J. Bono is the former Chief of Police for the Norristown Police Department and in that position, under both the Old Ordinance and the New Ordinance (collectively "the Ordinances"), had responsibility for, among other things, determining whether a call to which the police respond involves activity that can be characterized as disorderly in nature under the Ordinances. Defendant Bono maintained an office at the Norristown Police Department, 235 East Airy Street, Norristown, PA 19401. Defendant Bono resigned from his position effective February 28, 2013. Defendant Bono resides in Norristown, PA.

35. Defendant Willie G. Richet is the Interim Chief of Police for the Norristown Police Department and in that position, under the New Ordinance has responsibility for, among other things, determining whether a call to which the police respond involves activity that can be characterized as disorderly in nature under the New Ordinance. Defendant Richet maintains an office at the Norristown Police Department, 235 East Airy Street, Norristown, PA 19401. Defendant Richet assumed his position immediately after Defendant Bono's resignation.

36. Defendant Joseph E. Januzelli is the Municipal Code Manager for Norristown and in that position had and has responsibility for, among other things, enforcement of the Ordinances. Defendant Januzelli maintains an office with the Building & Code Enforcement Department at the Norristown Municipal Building, 235 East Airy Street, Norristown, PA 19401.

37. Defendants Forrest, Glisson, Bono, Richet, and Januzelli (collectively, the "Individual Defendants") are named herein in both their individual and official capacities. Each

of the Individual Defendants is a “person” as that term is defined in 42 U.S.C. § 1983 and at all relevant times has been acting under color of state law.

THE OLD ORDINANCE

38. At all relevant times, Norristown has required landlords to obtain rental licenses for each property that a landlord desires to rent to tenants in Norristown. *See* Section 245-2 of the Norristown Municipal Code, attached hereto as Exhibit A.

39. The Old Ordinance was in effect between January 5, 2009 and November 7, 2012 and allowed Norristown’s Municipal Administrator to revoke or suspend the rental license for any property where the police have responded to three instances of what the Chief of Police – in his sole discretion – considered “disorderly behavior” at the property within a four month period, including any “[d]omestic disturbances that do not require that a mandatory arrest be made.”¹ *See* Section 245-3 of the Norristown Municipal Code, attached hereto as Exhibit A. For each incident of “disorderly behavior,” landlords and their tenants were assigned a “strike.”

40. While the Old Ordinance purported to provide two exceptions to its enforcement for calls seeking “emergency assistance,” a plain reading of the relevant language reveals that these supposed “exceptions” were devoid of meaning:

a. First, the “exceptions” only exempted emergency calls made by “a tenant, a member of a tenant’s family or a tenant’s guest” and, thus, excluded calls for emergency assistance or otherwise by neighbors or any others outside the rental property;

b. Second, one of the “exceptions” did not apply if it was later determined, in the unilateral discretion of the Norristown Police Department, that any acts of “disorderly behavior” (as defined in the Old Ordinance) had occurred at the property; and

¹ Pennsylvania does not have a mandatory arrest provision in the law for domestic violence crimes.

c. Third, the other “exception” only excused such calls seeking “emergency assistance that is protected by Pennsylvania statute.”

41. The emptiness of these supposed “exceptions” was borne out by Defendants’ enforcement of the Old Ordinance against Ms. Briggs when the police were called to respond to emergency situations at her property and to protect her from incidents of domestic violence, as discussed herein.

42. The Old Ordinance unconstitutionally penalized domestic violence victims, like Ms. Briggs, who cannot control or prevent the violence perpetrated against them.

43. Although the nominal targets of the Old Ordinance were landlords in Norristown, the Old Ordinance had several direct, adverse effects on Ms. Briggs and other victims of domestic violence:

a. The Old Ordinance stripped domestic violence victims – some of the most vulnerable citizens in the community – of police protection, silenced them from reporting acts of violence against them, and emboldened their abusers to perpetrate their acts of violence in the home. Under the Old Ordinance, victims of domestic violence were essentially forced to choose between eviction and calling for help when they were being battered in their homes.

b. The Old Ordinance exacerbated the preexisting challenges that victims of domestic violence already face in accessing and maintaining housing. It is well-documented that domestic violence is a primary cause of homelessness and housing instability for women and children. Congress has found that women and families are being discriminated against and evicted from housing because of their status as victims of domestic violence, 42 U.S.C. § 14043e. Norristown itself reported to the federal Department of Housing and Urban

Development in 2012 that 20% of its homeless population are domestic violence victims. *See* Norristown Third Program Year Action Plan at 26, attached hereto as Exhibit B.

44. Domestic violence is a serious criminal, public health, and societal issue. One in three women in the United States has experienced rape, physical violence and/or stalking by an intimate partner in her lifetime, and it has been estimated that 85% of victims of domestic violence are women. Federal, state, and local governments have recognized the need for effective law enforcement response to these crimes, which historically were treated as private matters unworthy of police intervention. *See, e.g.*, Chapter 19 – Domestic Violence, U.S. Dept. of Hous. and Urban Dev., Pub. Hous. Occupancy Guidebook, at 216-19 (June 2003), attached hereto as Exhibit C.

45. Because the overwhelming numbers of domestic violence victims are women, the Old Ordinance had an inherent disparate impact on female tenants in Norristown.

THE RENTAL PROPERTY

46. Between November 1, 2010 and February 1, 2013, Ms. Briggs rented a house with a Section 8 voucher on Wayne Avenue, in Norristown (“the Property”).

47. Ms. Briggs’ landlord at the Property is named Darren Sudman (“Mr. Sudman”). Mr. Sudman considered Ms. Briggs to be a good tenant who paid her rent in a timely fashion.

EPISODES OF DOMESTIC VIOLENCE

48. While living at the Property, Ms. Briggs experienced several incidents of domestic violence where the police were called.

Early Incidents

49. On or about January 20, February 4, and March 12 and 17, 2012, Ms. Briggs called the police for assistance with domestic disturbances.

50. The police responded to all four of these calls but did not inform Ms. Briggs of the Old Ordinance and did not mention at that time whether the call would count as a strike.

April 9, 2012 Incident

51. On or about April 9, 2012, Ms. Briggs' boyfriend at the time, Wilbert Bennett ("Wilbert"), came to her home around 2:00 a.m. and tried to wake her up. He was intoxicated.

52. Wilbert and Ms. Briggs began arguing, and Wilbert hit her.

53. Ms. Briggs' 21 year old daughter, who was at the Property at the time, called the police. When the police arrived, they arrested Wilbert and charged him with disorderly conduct, public drunkenness, and possession of marijuana.

54. The police did not charge Ms. Briggs with a crime, issue a citation or accuse her of any violation of law.

55. This was the first occasion that the police informed Ms. Briggs about the Old Ordinance and warned her that this incident of domestic violence was her first strike. The police told her that they were charging her with a strike under the Old Ordinance because they were tired of responding to Ms. Briggs' previous calls to the police.

56. The police officer who told her about the Old Ordinance said: "You are on three strikes. We're gonna have your landlord evict you." The officer did not give Ms. Briggs any paperwork regarding the Old Ordinance or the three strikes policy.

57. Following this incident, Ms. Briggs had a lengthy discussion with members of her family and Wilbert regarding the Old Ordinance. She told them that any "disorderly behavior" could get her evicted under the Old Ordinance. She told them that it would be terrible if she got evicted and she needed to keep the rental house to raise her three year old daughter.

April 15, 2012 Incident

58. Just six days later, on or about April 15, 2012, Wilbert and members of Ms. Briggs' family were at Ms. Briggs' home for a barbeque.

59. A fight arose between Wilbert and the boyfriend of Ms. Briggs' 21 year old daughter.

60. None of the individuals from Ms. Briggs' home called the police for fear of incurring a second strike.

61. Instead, a neighbor called the police. Upon arrival, the police entered the house with guns drawn because it was reported – erroneously – that shots had been fired.

62. The police arrested Wilbert and Ms. Briggs' 21 year old daughter's boyfriend and charged them with simple assault and reckless endangerment.

63. The police officers did not mention the Old Ordinance or any strikes at that time.

64. However, Mr. Sudman, Ms. Briggs' landlord, later received a notice in the mail indicating that this incident constituted a second strike against Ms. Briggs.

65. When Ms. Briggs found out about the second strike, she filed a Pennsylvania "Right to Know" Request to learn more and spoke to Detective Todd Dillon of the Norristown Police Department, who informed her that this incident counted as her second strike.

66. Following the April 15 incident, Ms. Briggs broke up with Wilbert and told him that he could no longer stay at or even visit her home.

67. Ms. Briggs wanted everyone out of her home, except for her three year old daughter. She did not want to do anything to risk losing her home.

May 2, 2012 Incident

68. Two and a half weeks later, on or about May 2, 2012, Ms. Briggs returned home from work and saw Wilbert in an alleyway near her house, drinking and talking with some unknown individuals.

69. Wilbert chased Ms. Briggs down the alley with a brick and followed her to her house, where he attacked her.

70. An unknown person called the police. When the police arrived at her house, Wilbert ran into the house to hide from the police.

71. Ms. Briggs remained on the porch in only her bra; her shirt had been ripped off by Wilbert during the struggle.

72. Notwithstanding the obvious appearance of being assaulted, Ms. Briggs declined to tell the police what had happened and told them that there was no one in the house. She was reluctant to tell the police the truth for fear that it could lead to a third strike under the Old Ordinance.

73. When the police asked if they should remove Wilbert from the house, Ms. Briggs declined because she was worried about eviction under the Old Ordinance.

74. The police eventually entered the house and arrested Wilbert. Wilbert was charged with public drunkenness, and both Ms. Briggs and Wilbert were cited for disorderly conduct and fighting.

75. For each of the April 9, April 15, and May 2, 2012 incidents, the police charged Ms. Briggs with a strike under the Old Ordinance. The borough then initiated license-revocation proceedings against Mr. Sudman, Ms. Briggs' landlord.

MEETING WITH BOROUGH OFFICIALS

76. On or about May 23, 2012, Ms. Briggs accompanied Mr. Sudman to a meeting with borough officials, regarding whether Mr. Sudman's license for the property on Wayne Avenue should be suspended or revoked and whether Ms. Briggs could continue to live in the house.

77. In attendance at the meeting were Defendants Forrest, Bono, and Januzelli, and Norristown's Solicitor, Sean Kilkenny, Esq.

78. The meeting lasted approximately 30 minutes. No official record, transcript or minutes were kept and no one appeared to be designated as a finder of fact.

79. Defendant Bono did most of the talking at the meeting, reporting what was recorded in the police reports.

80. Ms. Briggs attempted to tell her side of the story and describe the incidents, but she was interrupted by Defendant Bono's statements that the police had responded to a call, and that one of the callers had claimed erroneously that shots had been fired at the house. Defendant Bono also made specious allegations of drug-related activity at the house.

81. Mr. Sudman also spoke at the meeting and described Ms. Briggs as a good tenant who paid her rent in a timely manner. He explained that he had never had a problem with Ms. Briggs.

82. Mr. Sudman added that it would be a significant loss for him to lose Ms. Briggs as a tenant and noted that it would be an even greater loss for Ms. Briggs to lose her home because she had a three year old child to care for.

83. Ms. Briggs brought a friend, Dana Henderson, to support her at the meeting, but Ms. Henderson was not permitted to speak.

84. Later the same day, Defendant Forrest issued a letter decision and placed the property on a 30-day probationary period.

85. Defendant Forrest declared in his letter decision that any further violations during the 30-day period would result in suspension or revocation of the rental license.

86. Thus, through this letter as well as their previous communications, the Defendants affirmatively instructed Ms. Briggs that any future calls to the police would lead to her eviction. They restricted her communications with law enforcement, despite the government's interest in encouraging the reporting of crimes and responding to domestic violence.

June 23, 2012 Incident

87. Wilbert was briefly incarcerated for some period of time as a result of the May 2nd incident.

88. However, Wilbert was released from prison around the middle of June and went to find Ms. Briggs at her house.

89. Wilbert wanted to get back together. He threatened Ms. Briggs: "You are going to be with me or you are going to be with no one."

90. Ms. Briggs told Wilbert that she did not want to be with him anymore, but Wilbert would not accept her decision and refused to leave.

91. Ms. Briggs permitted Wilbert to stay because she could not by herself physically force him to leave and knew that she could not call on the police to remove him without violating the probationary period and facing eviction under the Old Ordinance.

92. Left powerless, Ms. Briggs acquiesced to Wilbert's demands. She let her abuser stay because she felt intimidated and worried that he would harm her or her three year old daughter if she tried to do anything to force him out, and she knew that she could not call the police for help without risking eviction.

93. On or about the evening of June 23, 2012, Wilbert invited some of his friends over to Ms. Briggs' house.

94. Powerless to prevent Wilbert's and his friends' intrusion without calling the police, Ms. Briggs let them stay. She could not call the police without violating the Old Ordinance.

95. Later that evening, Wilbert attacked Ms. Briggs for allegedly flirting with other men.

96. He bit and tore her lip.

97. He broke a glass ashtray against the right side of her head, knocking her down and leaving a two-inch gash.

98. He stabbed her in the neck with one of the large broken glass shards.

99. Ms. Briggs ultimately passed out, with blood gushing from a four-inch-long puncture wound in her neck.

100. Ms. Briggs did not call the police for fear of triggering eviction under the Old Ordinance. A neighbor called the police.

101. Ms. Briggs was quickly flown by trauma helicopter to the University of Pennsylvania Hospital for emergency medical care.

102. Wilbert later turned himself in to authorities and was held on aggravated assault charges.

103. Ms. Briggs subsequently obtained a Protection from Abuse ("PFA") restraining order against Wilbert on July 12, 2012, which expires on July 11, 2015.

EVICITION PROCEEDINGS

104. Three days after the stabbing incident, on or about June 26, 2012, Defendant Forrest told Mr. Sudman that his rental license was revoked and that Ms. Briggs had ten days to vacate the property. However, Defendant Forrest told Mr. Sudman that he could apply for a new rental license as soon as Ms. Briggs vacated the property. *See* June 26, 2012 email chain, attached hereto as Exhibit D.

105. Ms. Briggs had just returned home from the hospital after being treated for the stabbing incident. It was the middle of her pay period and she did not have the money to go anywhere else.

106. Mr. Sudman told Ms. Briggs that the borough was, unfortunately, forcing him to file for her eviction.

First Eviction Hearing

107. Ms. Briggs, her attorney Susan Strong, Esq., and Mr. Sudman attended the first eviction hearing before Magisterial District Justice Margaret Hunsicker.

108. Mr. Sudman told District Justice Hunsicker that he did not want to evict Ms. Briggs because she was a good tenant who paid her rent in a timely fashion, and was bringing the eviction action solely because he was required to do so by the borough.

109. The Court issued a continuance and postponed its decision to give the borough some time to reconsider its decision.

110. Susan Strong communicated what had transpired at the eviction hearings to the borough.

Second Eviction Hearing – August 22, 2012

111. At the second eviction hearing, on or about August 22, 2012, District Justice Hunsicker ruled that Ms. Briggs could continue to live at the rental house if she paid her rent up through the end of August and Mr. Sudman's court filing fees relating to the eviction proceedings.

112. Ms. Briggs promptly paid the required amounts and was, therefore, entitled to remain in the property.

113. Susan Strong communicated the outcome of the hearing to Mr. Sudman and the borough.

SUBSEQUENT ATTEMPTS TO REMOVE MS. BRIGGS

114. Despite District Justice Hunsicker's ruling, the borough continued to pursue the removal of Ms. Briggs from her home.

115. On or about August 27, 2012, Defendant Forrest told Mr. Sudman that – based on advice of counsel and notwithstanding the U.S. Constitution, applicable federal law and District Justice Hunsicker's decision – the borough had an "independent right" under the Old Ordinance to revoke his rental license, condemn the property as "unlawful," and remove Ms. Briggs for trespassing. Accordingly, the borough strongly recommended that Mr. Sudman encourage Ms. Briggs to vacate the property voluntarily. *See* August 27, 2012 email from D. Forrest to D. Sudman, attached hereto as Exhibit E.

NOTICE OF CONSTITUTIONAL VIOLATIONS UNDER THE OLD ORDINANCE

116. Ms. Briggs, through her undersigned counsel, sent Defendants a letter on September 10, 2012 notifying Defendants of the unconstitutionality of Defendants' actions under the Old Ordinance and demanding that Defendants cease enforcement of the Old Ordinance

against Ms. Briggs and other tenants in Norristown. *See* September 10, 2012 letter, attached hereto as Exhibit F.

117. The September 10, 2012 letter also outlined the numerous constitutional problems associated with enforcement of the Old Ordinance and pointed out that the Old Ordinance violated the First, Fourth, Fifth, and Fourteenth Amendments to the U.S. Constitution and their Pennsylvania equivalents, as well as federal and state statutory law. *See id.*

118. Plaintiff's counsel later met with Defendants and Defendants' counsel on September 19, 2012 to discuss the constitutional concerns described in the September 10, 2012 letter.

119. At this meeting Defendants appeared to acknowledge the constitutional failings of the Old Ordinance.

120. Following this meeting, Defendants agreed to five demands by Plaintiff's counsel, including a repeal of the Old Ordinance:

a. First, Norristown agreed to cease any enforcement activities against Ms. Briggs under the Old Ordinance. Ms. Briggs would be free to call the Norristown Police Department without fear of eviction. Ms. Briggs would also not risk a strike or eviction if a neighbor or another person called the Norristown Police Department concerning Ms. Briggs' property.

b. Second, Norristown agreed to cease any enforcement activities against Ms. Briggs' landlord, Darren Sudman, under the Old Ordinance. Norristown would restore Mr. Sudman's rental license in full.

c. Third, Norristown agreed to suspend any enforcement of the Old Ordinance against any individuals (landlords or tenants) pending re-evaluation of the Old Ordinance by the Norristown Municipal Council.

d. Fourth, Norristown agreed to restore, where possible, the pre-enforcement positions of recently affected individuals (landlords or tenants).

e. Fifth, Norristown agreed to take steps to repeal the Old Ordinance in its entirety. *See* October 25, 2012 email chain, attached hereto as Exhibit G.

121. Plaintiff's counsel subsequently attempted to memorialize an agreement on these points with Defendants on October 25, 2012 in a written settlement agreement. *See id.*

122. However, Defendants, through their counsel, rejected Plaintiff's counsel's proposed settlement agreement and refused to enter into any written settlement agreement. *See id.*

123. Defendants subsequently repealed the Old Ordinance on November 7, 2012 by enacting Ordinance No. 12-11, attached hereto as Exhibit H.

124. In enacting Ordinance No. 12-11, the Norristown Municipal Council gave two reasons for repealing the Old Ordinance:

a. First, the Old Ordinance resulted "in the deprivation of property rights for tenants without due process in violation of the 5th and 14th Amendments to the U.S. Constitution and other federal and state statutes"; and

b. Second, a repeal of the Old Ordinance was "in the best interests of protecting the rights of the residents of Norristown." *See id.*

THE NEW ORDINANCE

125. Notwithstanding Norristown's admissions above in repealing the Old Ordinance, Defendants immediately began the process for introducing a proposed ordinance to re-enact the Old Ordinance in a "new" form.

126. On November 20, 2012, at the very next meeting of the Norristown Municipal Council following the repeal of the Old Ordinance, the Norristown Municipal Council introduced a proposed ordinance, “amending the 3-strikes ordinance.” *See* November 20, 2012 Municipal Council minutes, attached hereto as Exhibit I.

127. Defendants did not notify Ms. Briggs or Plaintiff’s counsel of the process or their plan to enact this new ordinance immediately following the repeal of the Old Ordinance.

128. At the following meeting of the Norristown Municipal Council on December 4, 2012, Defendants enacted the New Ordinance (Ordinance No. 12-15), to replace former Section 245-3 of the Norristown Municipal Code. *See* Ordinance No. 12-15, attached hereto as Exhibit J.

129. The New Ordinance permits Norristown’s Municipal Administrator to assess a series of daily, escalating criminal fines against landlords of any property where the police have responded to three instances of what the Chief of Police – in his sole discretion – considers “disorderly behavior” at the property within a four month period, including any “[d]omestic disturbances that do not require that a mandatory arrest be made.” *See id.*

130. The New Ordinance is substantially similar to the Old Ordinance in its direct, adverse impact on tenants in Norristown and is plagued by the same constitutional and legal deficiencies. *See* Blackline Comparison of the Old Ordinance and the New Ordinance, attached hereto as Exhibit K.

131. Whereas the Old Ordinance permitted Norristown to revoke or suspend a landlord’s rental license, the New Ordinance allows Norristown to impose criminal fines on landlords for the alleged “disorderly behavior” of a landlord’s tenants. *See id.*

132. Like its predecessor, the New Ordinance:

a. Gives the Chief of Police the authority and unfettered discretion to determine what “disorderly behavior” is and whether a landlord’s tenants or guests have engaged in such “disorderly behavior”;

b. Broadly defines “disorderly behavior” as conduct that “involves activity that can be characterized as disorderly in nature,” including “[d]omestic disturbances that do not require that a mandatory arrest be made”;²

c. Imposes a penalty on landlords where three instances of “disorderly conduct” have occurred at a property within a four month period; and

d. Provides a hollow exception for calls seeking “emergency assistance.” *See id.*

133. Unlike its predecessor, however, the New Ordinance goes further to penalize landlords and adversely impact tenants by:

a. Encouraging landlords to “include in their leases language that provides that it is a breach of the lease for a tenant to be convicted for disorderly behavior”; and

b. Subjecting landlords to criminal penalties according to a graduating series of fines for each instance of “disorderly behavior” that occurs at a landlord’s rental property, where “[e]ach day that a violation continues [] constitute[s] a separate offense.” *See id.*

134. Although the fifth recital of the New Ordinance states that the “Municipal Council desires that no . . . landlord [shall be] criminally responsible for the acts of their tenants,” subsections D, E, and K expressly provide that a landlord shall be subject to criminal fines up to \$1,000 per day for each incident of “disorderly behavior” of their tenants. *See Ordinance No. 12-15, attached hereto as Exhibit J.*

² Again, Pennsylvania does not have a mandatory arrest provision in the law for domestic violence crimes.

135. Although subsection H of the New Ordinance provides that “[n]o tenant shall be evicted or forced to vacate a rental dwelling unit by the Municipality of Norristown for violation of the provisions of Ordinance,” subsection F expressly provides that “adverse action may be taken [against a landlord] when the [landlord] fails to diligently pursue the eviction process.” Similarly, subsection I states that “[i]t is strongly encouraged that all [landlords] include in their leases language that provides that it is a breach of the lease for a tenant to be convicted for disorderly behavior.” *See id.*

136. Notwithstanding the shift from suspending or revoking landlords’ rental licenses to imposing criminal fines on landlords, the New Ordinance continues to suffer from the same constitutional and legal failings as its predecessor in that it:

- a. Adversely impacts and penalizes victims of domestic violence, like Ms. Briggs, who cannot control or prevent the violence perpetrated against them;
- b. Continues to strip victims of domestic violence of police protection, silences them from reporting acts of violence against them, and emboldens their abusers to perpetrate acts of violence in the home;
- c. Exacerbates the preexisting challenges that victims of domestic violence face in accessing housing;
- d. Has an inherent disparate impact on women; and
- e. Deprives domestic violence victims of a protected liberty interest in a dwelling without due process of law.

137. Defendants have attempted to sidestep the constitutional concerns of the Old Ordinance by drafting the New Ordinance in a way that: (a) penalizes landlords with criminal fines for the alleged “disorderly behavior” of their tenants, instead of revoking or suspending

their rental licenses; and (b) expresses Norristown's disinterest in evicting tenants but establishes a system by which landlords are obligated to take actions that Defendants have admitted would be unconstitutional if taken by them.

138. Such cosmetic alterations do nothing to rescue the New Ordinance from the same constitutional and legal failings that plagued the Old Ordinance.

**THE NEW ORDINANCE CONTINUES TO VIOLATE MS. BRIGGS'
CONSTITUTIONAL RIGHTS**

139. Ms. Briggs continues to fear that contacting the police for any reason may once again place her at risk of losing her home, even when she calls the police to protect her physical safety.

140. This fear was exacerbated when, on December 7, 2012, only a few days after the New Ordinance was enacted, Ms. Briggs learned that Norristown would be inspecting her home at the Property, without her consent, on December 11, 2012 as part of Norristown's new program of "random inspections" of rental units throughout the borough.

141. On information and belief, the proposed inspection of Ms. Briggs' home was not random; rather, Norristown officials had affirmatively selected her home for inspection.

142. Plaintiff's counsel sent Defendants' counsel a December 8, 2012 email objecting to and challenging the legality of Norristown's planned inspection of Ms. Briggs' home. *See* December 10, 2012 email chain, attached hereto as Exhibit L.

143. While Defendants have since agreed not to inspect Ms. Briggs' home without her consent, they have not indicated any agreement that they will not seek to do so in the future. *See id.*

THE NEW RENTAL PROPERTY

144. On February 1, 2013, Ms. Briggs and her three year old daughter moved from the Property to another location in Norristown, where she rents a house with a Section 8 voucher.

145. The landlord at Ms. Briggs' new property is named Rick Gallo ("Mr. Gallo").

146. Even at her new home, Ms. Briggs continues to fear that contacting the police for any reason may place her at risk for losing her home.

147. For example, on or about April 5, 2013, Ms. Briggs heard gun shots in her neighborhood and saw the gunman run through her backyard. She did not call the police to report this information for fear that it could lead to her eviction.

148. Defendants have not advised Ms. Briggs or her new landlord, Mr. Gallo, that Defendants consider the New Ordinance invalid or illegal, or that it will not be applied against them.

149. Defendants' initial actions to enforce the Old Ordinance against Ms. Briggs, their feigned repeal of the Old Ordinance, and their actions in enacting the New Ordinance continue to cause an undue chilling effect on the exercise of Ms. Briggs' free speech rights and her ability to seek the assistance of law enforcement.

150. At all relevant times, Defendants were acting within the enforcement and policy-making authority delegated to them under the Old Ordinance and the New Ordinance, which are both official laws, enacted by the Norristown Municipal Council.

151. Accordingly, Defendants are liable in both their individual and official capacities for harm caused to Ms. Briggs under both the Old Ordinance and the New Ordinance. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978).

INJUNCTIVE AND DECLARATORY RELIEF IS NECESSARY

152. Absent injunctive and declaratory relief, Ms. Briggs and other tenants in Norristown face an ongoing threat that they will lose their homes if they contact the police for help, which causes an undue chilling effect on the exercise of Ms. Briggs' and other Norristown tenants' free speech rights and their ability to seek the assistance of law enforcement.

153. Ms. Briggs will suffer irreparable harm, for which there is no adequate remedy at law, if Defendants are not enjoined from enforcing the New Ordinance against her.

154. Injunctive relief is necessary to ensure that Mr. Gallo is not penalized and, thus, encouraged to evict Ms. Briggs if she reports an incident of domestic violence to the police, and that Ms. Briggs and her three year old daughter are not evicted from their home for exercising their rights under the First Amendment.

**COUNT I – RIGHT TO PETITION
(U.S. Const. amend. I; Pa. Const. Art. I, § 20)**

155. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

156. The First Amendment to the United States Constitution and its Pennsylvania equivalent guarantee the right to petition the government for redress of grievances.

157. Under the First Amendment's "right to petition" clause, communications to law enforcement – including (1) reporting physical assault, (2) reporting criminal activity, and (3) filing a complaint with law enforcement – are constitutionally protected activities.

158. Defendants' enforcement of the Old Ordinance against Ms. Briggs and her landlord for calls made to the police, reporting physical violence and/or criminal activity, directly violated her right to petition the government to redress grievances.

159. Ms. Briggs was reluctant to report physical violence and/or criminal activity to the police for fear of receiving a “strike” under the Old Ordinance and triggering eviction from her home.

160. Thus, the Old Ordinance created an undue chilling effect on Ms. Briggs’ fundamental right to petition the police for protection.

161. Ms. Briggs suffered severe bodily injury as a result. The police affirmatively instructed her that any future calls to the police would lead to her eviction. Ms. Briggs was then effectively prevented from contacting the police when she was brutally attacked and almost killed by Wilbert.

162. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

163. Thus, Defendants’ threatened enforcement of the New Ordinance against Ms. Briggs and her landlord, and against other Norristown tenants and their landlords, continues to cause an undue chilling effect on the fundamental right of Ms. Briggs and other Norristown tenants to seek police protection.

164. The Old Ordinance did not and the New Ordinance does not advance any compelling government interest, and neither Ordinance is narrowly tailored to justify the infringement of Ms. Briggs’ or other Norristown tenants’ fundamental right to call the police.

165. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the First Amendment and its Pennsylvania equivalent.

**COUNT II – UNREASONABLE SEIZURE
(U.S. Const. amend. IV; Pa. Const. Art. I, § 8)**

166. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

167. The Fourth Amendment to the United States Constitution and its Pennsylvania equivalent guarantee individuals the right to be “secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.”

168. Under the Fourth Amendment and its Pennsylvania equivalent, a seizure of property occurs if there is some meaningful interference with an individual’s possessory interest in that property.

169. Tenants have possessory interests in their leaseholds.

170. Defendants, through their enactment and enforcement of the Old Ordinance, unreasonably and meaningfully interfered with Ms. Briggs’ property interest in her leasehold by revoking her landlord’s rental license and attempting to forcibly remove her from her rental property.

171. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

172. Thus, Defendants, through the enactment and enforcement of the New Ordinance, continue to threaten to unreasonably and meaningfully interfere with Ms. Briggs’ property interest in her leasehold by subjecting her landlord to potential criminal fines for any future alleged “disorderly behavior” at her home, and by directing and incentivizing her landlord to initiate eviction proceedings against her.

173. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourth Amendment and its Pennsylvania equivalent.

COUNT III – PROCEDURAL DUE PROCESS
(U.S. Const. amend. XIV; Pa. Const. Art. 1, §§ 1, 9, and 11)

174. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

175. The Fourteenth Amendment to the United States Constitution and its Pennsylvania equivalents provide that no person shall be deprived of life, liberty or property without due process of law.

176. Enforcement of the Old Ordinance threatened to deprive Ms. Briggs of her property interest in her leasehold by revoking her landlord's rental license and attempting to forcibly remove her from her rental property without adequate procedural protections.

177. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

178. Thus, enforcement of the New Ordinance continues to threaten to deprive Ms. Briggs of her property interest in her leasehold by subjecting her landlord to potential criminal fines for any future alleged "disorderly behavior" at her home, and by directing and incentivizing her landlord to initiate eviction proceedings against her without adequate procedural protections.

179. The Old Ordinance did not and the New Ordinance does not provide adequate legal procedures to protect against the deprivation of Ms. Briggs' property interests. Neither Ordinance requires any notice to be given to the tenant of violations of the Ordinance, nor gives the tenant an opportunity to contest either the Chief of Police's discretionary decision to characterize an incident as "disorderly behavior" or the borough's decision to enforce the Ordinance against the landlord.

180. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourteenth Amendment's Procedural Due Process Clause and its Pennsylvania equivalents.

**COUNT IV – SUBSTANTIVE DUE PROCESS (STATE-CREATED DANGER)
(U.S. Const. amend. XIV; Pa. Const. Art. 1 § 26)**

181. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

182. The Fourteenth Amendment to the United States Constitution and Pennsylvania equivalent provide that no person shall be deprived of life, liberty or property without due process of law.

183. Individuals have a constitutional liberty interest in personal bodily integrity that is protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

184. Under the Due Process Clause, Norristown has an obligation to protect its citizens from dangers it creates.

185. Defendants' enactment and enforcement of the Old Ordinance created a danger to Ms. Briggs because she was effectively prohibited from calling the police during an emergency without risking a strike and ultimate eviction under the Old Ordinance and, as a result, suffered severe bodily injury when she was brutally attacked and almost killed by Wilbert.

186. Defendants knew that Wilbert was violent, had a criminal record, and had a history of physically abusing Ms. Briggs. Indeed, the Norristown police had arrested Wilbert on at least two occasions for violent assaults on Ms. Briggs before he brutally attacked and almost killed her.

187. Defendants knew that the issuance of strikes to a domestic violence victim and tenant, such as Ms. Briggs, for calling the police for protection against domestic violence would cause such victim-tenants to refrain from calling the police for fear of triggering their evictions and would likely result in further injury from their abusers.

188. Defendants knew that Ms. Briggs was a specific target of Wilbert's violence and physical abuse because the police had arrested Wilbert on at least two occasions for violent assaults on Ms. Briggs before she was brutally attacked and almost killed by him.

189. Defendants, by enforcing the Old Ordinance against her, were grossly negligent and/or deliberately indifferent to Ms. Briggs' victimhood and effective inability to call the police for help.

190. Defendants deliberately ignored the clear signs of Wilbert's physical abuse of Ms. Briggs, continued to assign her strikes for Wilbert's attacks against her, and doggedly pursued her removal from the property for incidents of domestic violence at her home. Indeed, immediately after the police arrested Wilbert for his first attack on Ms. Briggs, on April 9, 2012, a Norristown police officer told Ms. Briggs: "You are on three strikes. We're gonna have your landlord evict you." Defendants even sought to remove Ms. Briggs from her home just days after she was brutally attacked and almost killed by Wilbert.

191. Defendants affirmatively enacted and enforced the Old Ordinance, issued strikes against Ms. Briggs for seeking emergency assistance from Norristown police, attempted to remove her from her rental property, and terrified her into believing that she would be evicted if she continued to seek emergency assistance from the police. But for Defendants' overt actions, Ms. Briggs would have sought police protection against the repeated domestic violence perpetrated against her by Wilbert.

192. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown and continues to create a danger to Ms. Briggs and other domestic violence victims who are tenants in Norristown.

193. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourteenth Amendment's Substantive Due Process Clause and its Pennsylvania equivalent.

COUNT V – EQUAL PROTECTION
(U.S. Const. amend. XIV; Pa. Const. Art. I, §§ 26 & 28)

194. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

195. The Fourteenth Amendment to United States Constitution and its Pennsylvania equivalents prohibit the denial of equal protection of the law.

196. The Old Ordinance provided less protection to victims of domestic violence than to other victims of violence, because “domestic disturbances” were specifically targeted as “disorderly behavior” that can result in the eviction of the victim.

197. The Old Ordinance and its application against domestic violence victims blamed victims for criminal conduct perpetrated against them, and treated domestic violence as a criminal justice problem less seriously than other crimes.

198. The Old Ordinance, thus, intentionally discriminated against female tenants in Norristown, such as Ms. Briggs, who are victims of domestic violence by specifically including “domestic disturbances” in the statute.

199. Ms. Briggs was injured by the Old Ordinance because she could not seek police assistance without being evicted.

200. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

201. The New Ordinance was enacted by Norristown with the knowledge and intent that it adversely impacts domestic violence victims' ability to seek police assistance and maintain their housing.

202. The New Ordinance continues to provide less protection to victims of domestic violence than to other victims of violence, because "domestic disturbances" are specifically targeted as "disorderly behavior" that can result in the eviction of the victim.

203. The New Ordinance and its application against domestic violence victims blame victims for criminal conduct perpetrated against them, and treats domestic violence as a criminal justice problem less seriously than other crimes.

204. Thus, the New Ordinance continues to intentionally discriminate against female tenants in Norristown, such as Ms. Briggs, who are victims of domestic violence by specifically including "domestic disturbances" in the statute.

205. The Old Ordinance did not and the New Ordinance does not advance a compelling or important government interest, and neither is narrowly tailored nor substantially related to advance such an interest.

206. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fourteenth Amendment's Equal Protection Clause and its Pennsylvania equivalents.

COUNT VI – VAGUENESS
(U.S. Const. amend. XIV; Pa. Const. Art. 1, §§ 1, 9, and 11)

207. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

208. The Fourteenth Amendment to the United States Constitution and its Pennsylvania equivalents prohibit the enforcement of legislation that is unduly vague.

209. The Old Ordinance failed to provide sufficient notice as to what conduct constitutes “disorderly behavior” and was covered by the Old Ordinance.

210. The Old Ordinance was largely incomprehensible and confusingly defined “disorderly behavior” as “activity that can be characterized as disorderly in nature,” including, among other things, “disorderly conduct.”

211. The Old Ordinance provided the Chief of Police with limitless discretion to determine what conduct was covered by the Old Ordinance and, thus, encouraged arbitrary and discriminatory enforcement.

212. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

213. Thus, the New Ordinance continues to fail to provide sufficient notice as to what conduct constitutes “disorderly behavior” and is covered by the Ordinances.

214. The New Ordinance continues to be largely incomprehensible and confusingly defines “disorderly behavior” as “activity that can be characterized as disorderly in nature,” including, among other things, “disorderly conduct.”

215. The New Ordinance continues to provide the Chief of Police with sole discretionary authority to determine what conduct is covered by the New Ordinance and, thus, encourages arbitrary and discriminatory enforcement.

216. Accordingly, the Old Ordinance was and the New Ordinance is void for vagueness under the Fourteenth Amendment and its Pennsylvania equivalents.

**COUNT VII – FEDERAL FAIR HOUSING ACT AND PENNSYLVANIA HUMAN
RELATIONS ACT**
**(Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*; Pennsylvania Human
Relations Act, 43 P.S. § 951 *et seq.*)**

217. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

218. The Fair Housing Act and its Pennsylvania equivalent prohibit discrimination on the basis of any protected class (including sex) in housing and further prohibit any law that purports to require or permit any action that would constitute a discriminatory housing practice or has a disparate impact on a protected class.

219. The Old Ordinance specifically targeted “domestic disturbances” as “disorderly behavior.”

220. The Old Ordinance did not distinguish between domestic violence perpetrators or victims, but instead applied against both.

221. By including domestic violence as “disorderly behavior,” Norristown had a policy of treating domestic violence offenses differently from other crimes and punishing victims who reported offenses.

222. The Old Ordinance discriminated against and had a disparate impact on female tenants in Norristown, such as Ms. Briggs, who are victims of domestic violence and, therefore, discriminated on the basis of sex.

223. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

224. The New Ordinance continues to target “domestic disturbances” even though Norristown was fully aware of the effects of the New Ordinance on domestic violence victims like Ms. Briggs when it was enacted.

225. The New Ordinance continues Norristown's policy of treating domestic violence offenses differently from other crimes and punishing victims who report offenses.

226. Thus, the New Ordinance continues to discriminate against and continues to have a disparate impact on female tenants of properties in Norristown, such as Ms. Briggs, who are victims of domestic violence and, therefore, continues to discriminate on the basis of sex.

227. Defendants intentionally discriminated against Ms. Briggs on the basis of sex, making a dwelling unavailable to her, discriminating against her in the rental terms, conditions, privileges, and provision of services, and interfering with her exercise and enjoyment of rights guaranteed under 42 U.S.C. § 3604, in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b) and 3617.

228. By adopting a policy of penalizing victims for police response to "domestic disturbances," Defendants engaged in a practice that has a disparate impact on women, because the great majority of domestic violence victims are women, and that discriminates on the basis of sex in violation of the Fair Housing Act, 42 U.S.C. §§ 3604(a) and (b) and 3617.

229. Defendants engaged in such discriminatory conduct intentionally, willfully, and in disregard of the rights of Ms. Briggs, and she suffered injury as a result.

230. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the Fair Housing Act and its Pennsylvania equivalent.

COUNT VIII – VIOLENCE AGAINST WOMEN ACT
(Violence Against Women Act, 42 U.S.C. § 1437f, et seq.)

231. Ms. Briggs incorporates by reference the allegations in the preceding paragraphs as though set forth at length herein.

232. In 2005, the federal Violence Against Women Act enacted housing protections for victims of domestic violence who live in public and Section 8 housing. The law provides that

incidents of actual or threatened domestic violence, dating violence, or stalking, shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence. Furthermore, the Violence Against Women Act provides that criminal activity directly relating to domestic violence engaged in by a member of a tenant's household or any guest or other person shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence.

233. Enforcement of the Old Ordinance against tenants of properties in Norristown, such as Ms. Briggs, who are victims of domestic violence, for calls made to the police, reporting physical violence and/or criminal activity, penalized them for being victims of domestic violence.

234. The New Ordinance is substantially similar to the Old Ordinance in its unconstitutional and unlawful impact on tenants in Norristown.

235. Thus, enforcement of the New Ordinance against tenants of properties in Norristown, such as Ms. Briggs, who are victims of domestic violence, for calls made to the police, reporting physical violence and/or criminal activity, threatens to penalize them for being victims of domestic violence.

236. Accordingly, the Old Ordinance violated and the New Ordinance continues to violate the federal Violence Against Women Act and the New Ordinance is preempted under the Supremacy Clause. Federal law clearly protects domestic violence victims who hold Section 8 vouchers, like Ms. Briggs, from termination of assistance, tenancy, or occupancy rights based on incidents of domestic violence.

PRAYER FOR RELIEF

WHEREFORE, Ms. Briggs respectfully requests the following:

a. a preliminary injunction pursuant to Federal Rule of Civil Procedure 65 prohibiting Defendants from further implementing or enforcing the New Ordinance, enacted pursuant to Ordinance 12-15, or the Old Ordinance, codified at Section 245-3 of the Norristown Municipal Code, against Ms. Briggs, other tenants residing in Norristown, or their landlords for any alleged “disorderly behavior” at rental properties in Norristown or from requiring their employees to do so, and from deeming any calls for police assistance to tenants’ homes as a “strike” under the Ordinances;

b. a permanent injunction prohibiting Defendants from enforcing the Old and New Ordinances, codified at Section 245-3 of the Norristown Municipal Code and enacted pursuant to Ordinance 12-15;

c. a declaratory judgment pursuant to 28 U.S.C. §§ 2201 & 2202 and 42 U.S.C. § 1983 declaring the Old and New Ordinances, codified at Section 245-3 of the Norristown Municipal Code and enacted pursuant to Ordinance 12-15, violate the First, Fourth, and Fourteenth Amendments to the United States Constitution, their Pennsylvania constitutional equivalents, and federal and state housing law;

d. damages against all Defendants for violating Ms. Briggs’ rights under the United States Constitution, and federal and state housing law by enforcing the Old Ordinance, codified at Section 245-3 of the Norristown Municipal Code, against her;

e. punitive damages against the Individual Defendants due to their intentional, willful, and reckless deprivation of Ms. Briggs’ rights under the United States Constitution and pursuant to 42 U.S.C. § 3613(c);

- f. an order directing Defendants to take such affirmative steps as necessary to prevent discrimination, harassment and retaliation against Ms. Briggs in the future;
- g. an order awarding Ms. Briggs' the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988 and § 3613(c); and
- h. such other relief as the Court deems just and proper.

Dated: April 29, 2013

Respectfully submitted,

/s/ Sara J. Rose

Witold J. Walczak (PA 62976)
Sara J. Rose (PA 204936)
American Civil Liberties Foundation
of Pennsylvania
313 Atwood Street
Pittsburgh, PA 15213
412.681-7864 (telephone)
412.681.8707 (facsimile)
vwalczak@aclupa.org
srose@aclupa.org

/s/ Sandra S. Park

Sandra S. Park
Lenora M. Lapidus
American Civil Liberties Union
Women's Rights Project
125 Broad St. 18th Fl.
New York, NY 10004
212.519.7871 (telephone)
212.549.2580 (facsimile)
spark@aclu.org
llapidus@aclu.org

/s/ Peter M. Smith

M. Duncan Grant (PA 21726)
Peter M. Smith (PA 93630)
Matthew E. Levine (PA 309419)
T. Stephen Jenkins (PA 311104)
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
215.981.4000 (telephone)
215.981.4750 (facsimile)
grantm@pepperlaw.com
smithpm@pepperlaw.com
levinem@pepperlaw.com
jenkinst@pepperlaw.com

Attorneys for Plaintiff Lakisha Briggs

VERIFICATION

I, Lakisha Briggs, hereby declare and affirm under penalty of perjury and pursuant to 28 U.S.C. § 1746 that I am the Plaintiff in this action, that I have personal knowledge of the facts set forth in the foregoing Verified First Amended Complaint, and that the facts set forth therein are true and correct to the best of my knowledge, information and belief. Executed on April ¹⁸29, 2013.


Lakisha Briggs

CERTIFICATE OF SERVICE

I, Peter M. Smith, hereby certify that on April 29, 2013 a true and correct copy of the foregoing Verified First Amended Complaint was filed via ECF and served via Federal

Express upon the following:

Borough of Norristown
c/o Robert H. Glisson
Municipal Administrator
Norristown Municipal Building
235 East Airy Street
Norristown, PA 19401

David R. Forrest
City Manager
The City of Canandaigua
2 North Main Street
Canandaigua, NY 14424

Robert H. Glisson
Municipal Administrator
Norristown Municipal Building
235 East Airy Street
Norristown, PA 19401

Russell J. Bono
3248 Hayes Road
Norristown, PA 19403-4052

Willie G. Richet
Chief of Police
Norristown Police Department
235 East Airy Street
Norristown, PA 19401

Joseph E. Januzelli
Municipal Code Manager
Norristown Municipal Building
235 East Airy Street
Norristown, PA 19401

David J. Sander, Esq.
Friedman, Schuman, Applebaum, Nemeroff &
McCaffery, P.C.
101 Greenwood Avenue, 5th Floor
Jenkintown, PA 19046
Direct 215-690-3828
Fax 215-635-7212
dsander@fsalaw.com

/s/ Peter M. Smith
Peter M. Smith



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

JUN 17 2013

CERTIFIED MAIL

Borough of Norristown, Pennsylvania
Robert H. Glisson, Interim Municipal Administrator
235 East Airy Street
Norristown, PA 19401

RECEIVED

JUN 19 2013

Adler

Dear Mr. Glisson:

Subject: Housing Discrimination Complaint
Assistant Secretary for Fair Housing & Equal Opportunity vs.
Borough of Norristown, PA
Title VIII Case No.: 03-13-0277-8
Section 109 Case No.: 03-13-0277-9

This letter notifies you that HUD's Office of Fair Housing and Equal Opportunity (FHEO) has issued a Secretary-initiated complaint alleging that the Borough of Norristown, PA has engaged in discriminatory housing practices on the basis of sex in violation of the Fair Housing Act, as amended (the Act). The Department of Housing and Urban Development (the Department) has enclosed for you a copy of the complaint, which describes the alleged discriminatory practices. The Department has made no determination as to whether the complaint against you has merit.

Under federal law, you may file an answer to this complaint or any amendment to the complaint, within ten (10) calendar days of your receipt of this notification letter. You must sign your answer and affirm that you have given a truthful response by including the statement "I declare under penalty of perjury that I have read this answer (including any attachments) and that it is true and correct." You may amend your statement at any time.

FHEO's Regional Office in Philadelphia, PA, will conduct an impartial investigation of the complaint and will afford all parties an opportunity to resolve the complaint through conciliation. The Fair Housing Act requires that the Department complete its investigation within 100 days of the filing of the complaint, or notify you of the reasons it cannot make a determination within that timeframe. Until the Department concludes the investigation, the Department requests that you refrain from destroying any documents or other evidence relevant to the investigation.

At the conclusion of the Department's investigation, should the matter not conciliate, the Department will notify you in writing as to its determination whether or not there is reasonable cause to believe a fair housing violation has occurred, as alleged. If the Department determines that there is reasonable cause to believe that an unlawful discriminatory housing practice has occurred, the Department will issue a charge. The notification of the charge and determination will advise you and the complainant of your rights to choose, within 20 days, whether you wish to have the case

heard by an Administrative Law Judge, or to have the matter referred for trial in the appropriate U.S. District Court. If the Department determines that there is no reasonable cause to believe that an unlawful discriminatory housing practice has occurred, the Department will dismiss the case.

Section 818 of the Act makes it unlawful for you, or anyone acting on your behalf, to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, any right granted or protected under the Act. The Act also makes it illegal for anyone to coerce, threaten, or interfere with any person for having aided or encouraged any other person in the exercise or enjoyment of, any right or protection granted to them under the Act.

Since the Borough of Norristown, PA is a recipient of Community Development Block Grant funds, the complaint has been accepted and will be investigated under Section 109 of the Housing and Community Development Act of 1974.

Section 109 states:

No person in the United States shall, on the ground of race, color, sex, religion, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded in whole or in part with funds made available under this chapter.

This complaint will be concurrently processed under both authorities and an investigation will now be conducted. If the investigation is not completed within 100 days, you will be notified in writing.

I have enclosed some explanatory material on the law for your information. If you have any questions regarding this case, please contact Barbara R. Delaney, Director, FHEO Philadelphia Program Center, at (215) 861-7637. You may send correspondence to Ms. Delaney at the following address:

Barbara R. Delaney
Director, FHEO Philadelphia Program Center
U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107

Please refer to the case number at the top of this letter when you contact her office and keep her advised of any change of your address or telephone number.

Sincerely,

A handwritten signature in cursive script that reads "Melody Taylor-Blancher".

Melody Taylor-Blancher
Regional Director

Enclosures

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: 03-13-0277-8

CASE NAME: Assistant Secretary for Fair Housing & Equal Opportunity v. Borough of Norristown, PA

1. Complainant

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, S.W., Suite 5100
Washington, D.C. 20410

2. Other Aggrieved Persons

Undetermined

3. The following is alleged to have occurred or is about to occur:

Discriminatory terms, conditions and privileges

4. The alleged violation occurred because of:

Sex (female)

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

Borough of Norristown, Montgomery County, PA

6. Respondents

Borough of Norristown
East Airy Street, Norristown, PA 19401

In their official capacity:

Gary Simpson, Council President
Robert H. Glisson, Interim Municipal Administrator for Norristown

7. The following is a brief and concise statement of the facts regarding the alleged violation:

The Assistant Secretary for Fair Housing and Equal Opportunity, on behalf of the Secretary of the U.S. Department of Housing and Urban

Development, files the Secretary-initiated complaint of housing discrimination as authorized by Section 810 (a)(1)(a)(i) of the Fair Housing Act, 42 U.S.C. § 3610.

The complaint alleges the Borough of Norristown, Montgomery County, Pennsylvania ("Norristown" or "the Borough") unlawfully discriminated against women by enacting and enforcing Ordinance 12-03. After this ordinance was repealed in November 2012, an equally discriminatory ordinance (Ordinance 12-15) was passed and is currently being enforced. Both ordinances have resulted in women who are victims of domestic violence being evicted from their rental homes as result of law enforcement being called to their home to intervene under the auspices of "disorderly behavior." Section 245-3 of the Norristown Municipal Code, as enacted by Ordinance 12-15, holds landlords responsible for their tenants and encourages landlords, at the risk of being fined, to evict tenant were the police have been called to the address for three times within a four months period for "disorderly behavior," including domestic violence

Ordinance 12-03 of the Norristown Municipal Code was in effect between February and November 2012 and allowed Norristown's Municipal Administrator to revoke or suspend the rental license for any property where the police have responded to three (3) instances of what the Chief of Police (in the Chief's sole discretion) considered "disorderly behavior" at the property within a four month period, including any "domestic disturbances that do not require that a mandatory arrest be made."

The Borough of Norristown enforced the Ordinance against landlords and tenants by revoking a tenant's landlord rental license and attempting to remove the tenant from their home, on grounds that the police were called upon too many times to protect an individual from an incident of domestic violence.

The current ordinance permits the Borough of Norristown to assess a series of escalating fines against a landlord of any property, at which, within a four month period, the police have responded to three instances of disorderly behavior, including instances of domestic violence. The fines increase to \$1,000.

The ACLU has filed a civil action in U.S. District Court for the Eastern District of Pennsylvania on behalf of a 33 year old African American, single mother. She is a resident of Norristown, in Montgomery County, PA. The women was a victim of domestic violence and when police were called to respond to an emergency situation at her property the Ordinance, known as the "Three Strikes Ordinance," penalized her for her being a victim who could not control or prevent the violence perpetrated against her.

According to two newspaper articles published in the Norristown Patch a resident of Norristown was threatened with eviction after requesting police protection from an abusive ex-boyfriend in 2012. She was targeted for eviction under the "Three Strikes Ordinance."

This ordinance has a disproportionate effect on women who suffer domestic violence. If proven, these allegations may violate the Fair Housing Act on the basis of sex (female).

8. The most recent date on which the alleged discrimination occurred:

December 4, 2012, and is continuing.

9. Types of Federal Funds identified:

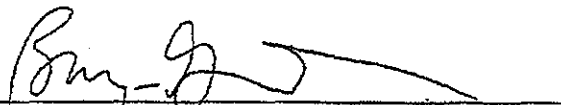
Community Development Block Grant.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

Section 804b or f of Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Act of 1988.

Section 109 of the Housing and Community Development Act of 1974.

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.


Assistant Secretary
for Fair Housing and Equal Opportunity

6/5/2013
(Date)

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

TITLE VIII AND SECTION 109

CONCILIATION AGREEMENT

Between

**U.S. Department of Housing and Urban Development
Assistant Secretary of the Office of Fair Housing and Equal Opportunity
(Complainant)**

And

**Municipality of Norristown
(Respondent)**

SECRETARY INITIATED COMPLAINT CASE NUMBERS:

03-13-0277-8 and 03-13-0277-9

A. PARTIES AND SUBJECT PROPERTIES

1. The parties to this conciliation agreement are as follows:

a. Complainant

Assistant Secretary for the Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, D.C. 20410

b. Respondent

Municipality of Norristown
Crandall O. Jones, Municipal Administrator
235 East Airy Street
Norristown, PA 19401

Representing the Municipality of Norristown:

David J. Sander
Friedman Schuman, P.C.
101 Greenwood Avenue, Fifth Floor
Jenkintown, PA 19046
Work: 215-690-3828 Fax: 215-635-7212

2. The subject properties consist of rental properties in the Municipality subject to Ordinance 12-03 and Ordinance 12-15.

B. STATEMENT OF FACTS

1. A complaint was filed on June 5, 2013 by the Assistance Secretary for Fair Housing and Equal Opportunity ("FHEO") alleging that the Respondent unlawfully discriminated against females by enacting and enforcing Ordinance 12-03 and subsequently enacting a similar Ordinance 12-15 as its replacement. The complaint alleged that the Ordinances were enacted to hold landlords responsible for their tenants and encouraged landlords to evict tenants cited for "disorderly behavior" or risk losing their rental license and/or be subject to fines. The definition of "disorderly behavior" in both Ordinances included any "domestic disturbances that do not require that a mandatory arrest be made." FHEO also alleged that the Ordinances had a disproportionate effect on females who suffer from domestic violence incidents.
2. The Municipality contends that both Ordinances sought to reduce the numerous instances of disorderly behavior to which the Norristown Police Department had to respond at predominately tenant-occupied properties. Respondent states that both

Ordinances are gender-neutral and therefore do not have a disproportionate effect on females or females who suffer from domestic violence incidents. Respondent states that if domestic violence occurs, and there is probable cause to believe that such a crime was committed, the Municipality's Police Department is required by its own policy and procedure to arrest and not charge a landlord with a "strike" under the Ordinances. Nevertheless, the Respondents agree to settle the claims in the underlying actions by entering into this Conciliation Agreement.

3. On August 6, 2014, the Municipality enacted Ordinance 14-09, which repeals Section 245-3 of the General Laws of Norristown or Ordinance 12-15. The repeal is effective five days after enactment of Ordinance 14-09.

C. TERM OF AGREEMENT

This Conciliation Agreement (hereinafter "Agreement") shall govern the conduct of the parties to it for a period of two (2) years from the effective date of the Agreement.

D. EFFECTIVE DATE

1. The parties expressly agree that this Agreement constitutes neither a binding contract under state or federal law nor a Conciliation Agreement pursuant to the Act, unless and until such time as it is approved by the Department, through the Assistant Secretary of the Office of FHEO and the FHEO Regional Director or his or her designee.
2. This Agreement shall become effective on the date on which it is approved by the Assistant Secretary for the Office of FHEO, U.S. Department of Housing and Urban Development.

E. GENERAL PROVISIONS

1. The parties acknowledge that this Agreement is a voluntary and constitutes a full settlement of the claims set forth in the complaint in the above-referenced cases. The parties affirm that they have read and fully understand the terms set forth herein. The parties agree that they have not been coerced, intimidated, threatened, or in any way forced to become a party to this Agreement.
2. The Respondent acknowledges that it has an affirmative duty not to discriminate under the Act and that it is unlawful to retaliate against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Act. The Respondent further acknowledges that any subsequent retaliation or discrimination after the effective date of this Agreement constitutes both a material breach of this Agreement and a statutory violation of the Act.

3. This Agreement, after it has been approved by the Assistant Secretary, FHEO or his or her designee and the FHEO Regional Director, is binding upon the Respondent, its employees, heirs, successors and assigns and all parties to this Agreement.
4. The parties understand that upon approval of this Agreement, this Agreement is a public document, pursuant to 810(b)(4) of the Act.
5. This Agreement does not in any way limit or restrict the Department's authority to investigate any other complaint involving the Respondent made pursuant to the Act, or any other complaint within the Department's jurisdiction. This Agreement does resolve all issues that are raised or could have been raised in the complaint.
6. No amendment to, modification of, or waiver of any provisions of this Agreement shall be effective unless: (a) all signatories or their successors to the Agreement agree in writing to the amendment, modification, or waiver; (b) the amendment, modification, or waiver is in writing; and (c) the amendment, modification, or waiver is approved and signed by the Assistant Secretary, FHEO and Regional Director, Philadelphia Office.
7. The parties agree that the execution of this Agreement may be accomplished by separate execution of consents to this Agreement, and that the original executed signature pages attached to the body of the Agreement constitute one document.
8. The Assistant Secretary of FHEO hereby forever waives, releases, and covenants not to sue the Respondent and its respective heirs, executors, assigns, officers, commissioners, agents, employees and attorneys with regard to any and all claims, damages, and injuries of whatever nature, whether presently known or unknown, arising out of or in any way related to the subject matter of HUD Case Numbers 03-13-0277-8 and 03-13-0277-9, or which could have been filed in any action or suit arising from said subject matter.
9. The Respondent hereby forever waives, releases, and covenants not to sue the Department, its heirs, executors, assigns, successors, agents, officers, employees, and attorneys with regard to any and all claims, damages, and injuries of whatever nature whether presently known or unknown, arising out of the subject matter of HUD Case Numbers 03-13-0277-8 and 03-13-0277-9, or which could have been filed in any action or suit arising from said subject matter.

F. RELIEF IN THE PUBLIC INTEREST

1. Within thirty (30) days of the effective date of this Agreement, Respondent shall provide all employees with a copy of this Agreement and allow an opportunity for such employees to have any questions concerning the Agreement answered. Respondent will retain a copy in its Municipal Building for the public to review upon request.

2. Within forty-five (45) days of the effective date of this Agreement, Respondent shall submit to the Department for review and approval the name and credentials of the fair housing source that the Municipality plans to contract to provide fair housing training as outlined in Provision 3 below.
3. Within sixty (60) days of the effective date of this Agreement, Respondent shall submit to the Department for review and approval the training curriculum that the Department's approved fair housing instructor will provide to:
 - a. The Municipal Administrator, the Director of Code Enforcement, the Chief of Police, and all other persons who have interaction with victims of crime or abuse (i.e., police officers) or authority to enact an ordinance pertaining to nuisance properties or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15). The fair housing training shall:
 - i. be at least three (3) hours in length;
 - ii. have an emphasis on sex and disability discrimination; and
 - iii. include cultural diversity and sensitivity training.
 - b. All Councilmembers. The fair housing training shall:
 - i. be at least an hour and a half (1.5) hours in length;
 - ii. have an emphasis on sex and disability discrimination; and
 - iii. include cultural diversity and sensitivity training.
4. Within ninety (90) days of the effective date of this Agreement, Respondent shall have all Councilmembers, the Municipal Administrator, the Director of Code Enforcement, the Chief of Police, and all other persons who have interaction with victims of crime or abuse or authority to enact an ordinance pertaining to nuisance properties or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) undergo the Department's approved fair housing training by the mutually agreed upon fair housing source. This training shall be provided on an annual basis throughout the duration of this Agreement in accordance with Provision 3a and 3b.
5. Within ninety (90) days of hiring new employees and/or Councilmembers, who have interaction with victims of crime or abuse or authority to enact an ordinance pertaining to nuisance properties or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15), these persons shall undergo the Department's approved fair housing training by the mutually agreed upon fair housing instructor. For purposes specific to Provision 5, new employees and/or Councilmembers hired after the annual fair housing training may view the most recently recorded fair housing training that was provided by the Department's approved fair housing source.

6. Within ninety (90) days of the effective date of this Agreement, Respondent shall develop an education and outreach program, including a brochure concerning rights regarding the Fair Housing Act. The brochure shall contain:
 - a. The express statement that the Municipality encourages all tenants to call the police when they are in need of assistance and that the Municipality does not discourage victims of crime or disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) from calling the police.
 - b. A summary of rights under the Fair Housing Act and how someone can report a claim of discrimination, including HUD's Fair Housing Hotline Number.

This brochure shall be provided to tenants when police arrive at a unit for an instance of alleged disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) and to landlords when they apply for their rental license and when they renew their license.

7. Within thirty (30) days of publication of notice of the repeal of Ordinance 12-15, in accordance with terms agreed upon in a separate agreement with Lakisha Briggs, Respondent shall provide the Department with a copy of its notice in the Times Herald and a copy of the notices placed on three separate pages of its website.
8. Within one hundred-eighty (180) days of the effective date of this Agreement, Respondent shall partner and seek guidance from a local domestic violence advocacy group to develop a community service activity that will raise awareness about domestic violence.
9. Within forty-five (45) days of the date of the community service activity that will help raise awareness about domestic violence, Respondent shall submit to the Department a draft of its notification that will be used to inform the public about said activity.
10. Within thirty (30) days of the date of the community service activity, Respondent shall publicize its community service activity that will help raise awareness about domestic violence.
11. Within three hundred-sixty (360) days of the effective date of this Agreement, Respondent shall conduct its community service activity that was developed under the guidance of a local domestic violence advocacy group that will help raise awareness about domestic violence. This activity is to be conducted annually for the duration of the Agreement.

G. MONITORING

The Department shall determine compliance with the terms of the Agreement. During the term of the Agreement, the Department may review compliance with this Agreement. As part of such review, the Department may examine witnesses and copy pertinent records of the Respondent. Respondent agrees to provide its full cooperation in any monitoring review undertaken by the Department to ensure compliance with this Agreement.

H. REPORTING AND RECORDKEEPING

1. Within sixty (60) days of the effective date of this Agreement, Respondent shall certify that it has provided a copy of the Agreement to all employees, provided an opportunity to answer questions, and retained a copy of the Agreement in its Municipal Building as required by Provision F.1.
2. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall submit certifications of training completion for all participants of the mandatory training outlined in Provisions F.3 and F.4.
3. Within one hundred and twenty (120) days of any new hire who will be required to take the training outlined in Provision F.5, Respondent shall submit certifications of training completed.
4. Within one hundred and twenty (120) days of the effective date of this Agreement, Respondent shall submit an outline of its education and outreach program and a copy of its brochure as required in Provision F.6. Annually for the duration of the agreement, the Respondent shall certify that it meets the requirements of distributing this brochure to tenants when police arrive at a unit for an instance of alleged disorderly behavior (or those acts that were previously defined as disorderly behavior under Ordinance 12-15) and to landlords when they apply for their rental license and when they renew their license.
5. Within (30) days of the publication of notices required under a separate agreement with Lakisha Briggs, Respondent shall provide copies of the notices to the Department as required by Provision F.7.
6. Annually for the duration of this Agreement, Respondent shall certify completion of its community service activity outlined in Provisions F.8 through F.11. within thirty (30) days of completion of the activity.
7. Annually for the duration of this Agreement, Respondent shall report to the Department all complaints of housing discrimination received by the Municipality, including the name of the complainant, a summary of the allegations, what steps the Municipality took to investigate the claim, and the outcome of the investigation.

8. All required certifications and documentation of compliance must be submitted to:

Barbara Delaney
Program Center Director
U.S. Department of Housing and Urban Development
Office of Fair Housing and Equal Opportunity
The Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3389


I. CONSEQUENCES OF BREACH

Whenever the Department has reasonable cause to believe that the Respondents have breached this Agreement, the matter may be referred to the Attorney General of the United States, to commence a civil action in the appropriate U.S. District Court, pursuant to §§ 810(c) and 814 (b)(2) of the Act.

FHEO CASE NUMBERS 03-13-0277-8 AND 03-13-0277-9

J. SIGNATURES

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.



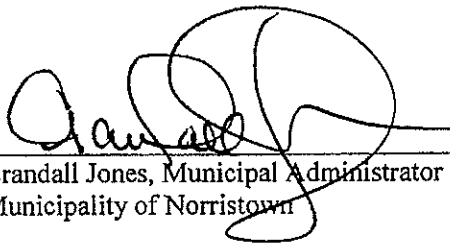
Assistant Secretary for the Office of FHEO
U.S. Department of Housing and Urban Development

9/18/14
Date

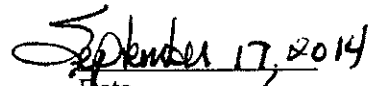
FHEO CASE NUMBERS 03-13-0277-8 AND 03-13-0277-9

K. SIGNATURES

By signing below, the signatories agree that they intend to be legally bound, and represent that they have the authority to execute this Agreement on behalf of the party they are signing for.



Crandall Jones, Municipal Administrator
Municipality of Norristown



Date

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT ("Release") is made and entered into by and between Lakisha Briggs ("Plaintiff), and the Municipality of Norristown, ("Releasee"), Defendant.

WHEREAS, the Plaintiff has presented various claims against the Defendant and various employees and officials of the Defendant arising out of an incident or series of incidents occurring in 2012 which are more fully described in Plaintiff's Second Amended Complaint which was filed in the United States District Court for Eastern District of Pennsylvania at Civil Action No. 13-cv-02191 ("the Lawsuit"), and

WHEREAS, Plaintiff alleged that she sustained bodily harm and suffered a deprivation of her constitutional rights as set forth more fully in the Second Amended Complaint; and

WHEREAS, Defendants deny these allegations and contend that Plaintiff suffered no harm and no violation of her constitutional rights based on the allegations set forth therein; and

WHEREAS, the Plaintiff and the Defendant Releasee desire to settle the matters raised in the lawsuit, together with any and all other matters pertaining to the parties named herein and the above noted incident or incidents, that might have been raised, that could be raised, that could have been raised, or that might be raised in the future concerning the actions of Defendants through the date of the execution of this Release, and

WHEREAS, Plaintiff agrees that the Court may enter an Order dismissing, with prejudice, the individual Defendants named in the aforesaid Lawsuit, being, David R. Forrest, Russell J. Bono, Willie G. Richet, Joseph E. Januzelli and Crandall O. Jones.

NOW THEREFORE, with the foregoing background being incorporated herein by reference, and made part hereof, Plaintiff, and her attorneys, for and in consideration of the total sum and sole consideration of **Four Hundred and Ninety-Five Thousand Dollars (\$495,000.00)**, which shall be payable to Lakisha Briggs and her attorneys, Pepper Hamilton LLP as set forth more fully herein, receipt of which is hereby acknowledged, do hereby remise, release, and forever discharge, and by these presents, do for themselves, their successors, administrators, assigns, heirs and executors, remise, release, and forever discharge the Defendants and Releasee and its respective past, present, and future officials, officers, directors, stockholders, attorneys, agents, servants, representatives, employees, predecessors, and successors in interest and assigns, of and from any and all claims, demands, obligations, actions, causes of action, rights, damages, costs, expenses, and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, and whether for compensatory or punitive damages, which the Plaintiff may now have on account of the facts asserted in the Lawsuit (and all related pleadings), or which the Plaintiff may hereafter accrue or otherwise acquire on account of the facts asserted in the Lawsuit (and all related pleadings), including, without limitation, any and all known or unknown claims for bodily and personal injuries to Plaintiff, and the consequences thereof, which have resulted or may result from the alleged

negligent or intentional acts or omissions, of the Releasee, Defendants or their agents, employees and officials related to the subject of the Lawsuit. This Release, on the part of the Plaintiff, shall be a fully binding and complete settlement between the Plaintiff, the Defendants and Releasee and all parties represented by or claiming through the Plaintiff save only the executory provisions of this Release and Settlement Agreement.

1. Payments and Settlement Funds

In consideration of the release set forth above, the Insurer on behalf of the Defendants and Releasee, Municipality of Norristown, agrees to pay the payees identified above within fourteen (14) days of the execution of this agreement by all parties and counsel and said settlement check shall be sent by overnight mail to Timothy Stephen Jenkins at Pepper Hamilton LLP.

From the settlement fund identified above, Pepper Hamilton LLP shall distribute to Ms. Briggs \$250,000 representing damages flowing from personal physical injuries under the Internal Revenue Code § 104(a)(2). The balance of the settlement fund shall constitute attorneys' fees and costs which shall be distributed in accordance with any agreement regarding fee sharing between Pepper Hamilton LLP and the ACLU.

Beyond the payment described in the preceding paragraphs, the parties do not bear any other responsibility for attorneys' fees and costs arising from their actions or the actions of their own counsel in connection with the Lawsuit identified above, this Release and Settlement Agreement, and the matters and documents referred to herein and all related matters.

The Plaintiff hereby acknowledges and agrees that the Release set forth hereinabove is a General Release, and she further expressly waives and assumes the risk of any and all claims for damages which exist as of this date, but which the Plaintiff does not know of or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect her decision to enter into this Release and Settlement Agreement. The Plaintiff further agrees she has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact, and she fully assumes the risk that the facts or the law may be otherwise than Plaintiff believes.

The Plaintiff agrees and acknowledges that she accepts payment of the sums specified in this Release and Settlement Agreement as a full and complete compromise of matters involving disputed issues. It is further acknowledged that payment of the sums by the Defendants and Releasee and the negotiations for this settlement (including all statements, admissions or communications) by the Defendants and Releasee, or their attorneys or representatives are made solely for purposes of avoiding the excessive cost of litigation of this matter only and that the Defendants and Releasee do not in any way admit any liability to the Plaintiff by entering into this Agreement to settle this matter. In fact, the Defendants and Releasee expressly deny any and all liability whatsoever in this matter.

The Plaintiff represents and warrants that no other person or entity other than her legal counsel has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Release and Settlement Agreement; that she and they have the sole and

exclusive right to receive the sums specified in it; and, that she has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Release and Settlement Agreement.

Plaintiff agrees to indemnify and hold harmless the Defendants and Releasee from, and to satisfy in full, any and all claims or liens presently existing or that might exist in the future against the Plaintiff on the settlement fund herein by any person, entity, or corporation. Plaintiff's agreement to indemnify and hold harmless Defendants and Releasee includes any claim, demand or suit made in connection with any medical lien including any lien by Medicare or any healthcare provider.

Plaintiff has represented and Defendants have relied upon Plaintiff's representation that there are no Medicare and social security liens against the proceeds of this settlement. To the extent that there is any Medicaid lien or any other medical lien from any healthcare provider, Plaintiff will satisfy such lien and indemnify and hold harmless Defendant Releasee from any claims, demands, or suits seeking payment in satisfaction of such lien.

2. Repeal of §245-3 of the General Laws of Norristown

The Municipality of Norristown represents and warrants that it has repealed §245-3 of the General Laws of Norristown by Ordinance No. 14-09 of 2014 which was adopted on August 6th, 2014, a copy of which is attached hereto and marked Exhibit 1.

3. Publication of Repeal of §245-3

The Municipality of Norristown will publish Notice of Repeal of §245-3 in the Times Herald, a newspaper of general circulation in the County of Montgomery, Pennsylvania, and shall change its website pages on code enforcement (at <http://norristown.org/code-enforcement>) and for tenants (at <http://norristown.org/userfiles/file/TenantInformationGuide.pdf> and <http://norristown.org/userfiles/file/tigspanish.pdf>) to add an affirmative statement that the three-strikes ordinance (Section 245-3 of the General Laws of Norristown) has been repealed and no longer applies, and shall maintain such notice on the webpages for a period of one (1) year from the date the statement first appears.

4. Subsequent Ordinances

The Municipality of Norristown agrees that it will not adopt an ordinance that penalizes a resident, tenant or landlord as a result of requests for police or emergency assistance made by or on behalf of a victim of abuse as defined in 23 Pa.C.S. § 6102 (relating to definitions), a victim of a crime pursuant to 18 Pa.C.S. (relating to crimes and offenses), or an individual in an emergency pursuant to 35 Pa.C.S. § 8103 (relating to definitions).

The Municipality of Norristown agrees that in the future if its legislative body seeks to enact an ordinance that regulates the subject matter at issue (a) in Ordinance No. 12-15 of 2012 as it relates to Section 245-3, attached hereto as Exhibit 2 and incorporated herein by reference as if set forth herein at length, or (b) in Plaintiff's Second Amended Complaint, attached hereto as Exhibit 3 and incorporated herein by reference as if set forth herein at length, that it will provide notice to the Executive Director of the American Civil Liberties Union of

Pennsylvania, currently at P.O. Box 40008, Philadelphia, PA 19106, at least thirty (30) days prior to the enactment of any such ordinance.

5. Submission of Requested Orders to the Court

The parties shall submit a stipulation executed by one or more counsel on behalf of the parties dismissing the individual Defendants identified above and, further, requesting that the Court enter an order retaining jurisdiction over the settlement for three (3) years and dismissing this lawsuit pursuant to Local Rule 41.1 (b).

6. Authorization

The persons executing this Release and Settlement Agreement hereby represent and warrant that they have full right, power and authority to sign this settlement agreement. Ms. Briggs and the Municipality of Norristown further represent and warrant that they have the capacity to enter into this Release and Settlement Agreement.

7. Advice of Counsel

This Release and Settlement Agreement has resulted from negotiation by the parties represented by counsel, and in the event of ambiguity or otherwise, it shall not be construed against or in favor of any party on the grounds that counsel for such party was the draftsman of this Release and Settlement Agreement or any particular part of it. Each party represents and warrants that the terms of this Release and Settlement Agreement have been completely read by her or it and that the terms set forth herein are fully understood and voluntarily accepted by her or it. Both parties further represent that they have relied upon the legal advice of their respective attorneys, who are the attorneys of their own choice and that the terms of the this Release and Settlement Agreement have been completely read and explained to them by one or more of their attorneys and that they fully understand and voluntarily accept this Release and Settlement Agreement.

8. Entire Agreement

This Release and Settlement Agreement embodies the entire agreement between the parties with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors, and assigns of each. There are no other understandings or agreements, oral or otherwise in relation thereto, between the Plaintiff and the Defendant Releasee.

9. Modification

This Release and Settlement Agreement may not be modified except by a writing executed by each party.

10. Governing Law and Jurisdiction

The terms of this Release and Settlement Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.

11. Dismissal of this Action

Upon the execution of this Release and Settlement Agreement by both parties, counsel for the parties will submit a stipulation to the Court seeking the dismissal of the individual Defendants and the entry of an order retaining jurisdiction over the settlement for three (3) years and dismissing this lawsuit pursuant to Local Rule 41.1 (b) as described in paragraph 5 of this Release.

If the Court approves the aforesaid stipulation and agrees to enter the aforesaid order retaining jurisdiction and dismissing the lawsuit, the Court's approval of the aforesaid stipulation and entry of the aforesaid order will constitute the dismissal of the action. If the Court does not agree to enter the aforesaid order, the parties will file a stipulation of dismissal within three (3) days after the Court advises the parties that it does not so agree to retain jurisdiction, and the filing of that stipulation will constitute the dismissal of this action.

12. Counterparts

This Release and Settlement Agreement may be executed in two or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile signatures and signatures in PDF format transmitted by email shall be deemed originals.

13. Headings

The headings to various clauses of this Settlement Agreement have been inserted for convenience only and shall not be used to interpret or construe the meaning of the terms and provisions hereof.

14. Survival

All representations, warranties, covenants and agreements made herein shall be continuing, shall be considered to have been relied upon by the parties and shall survive the execution, delivery and performance of this Settlement Agreement.

15. Successors and Assigns

The rights and obligations set forth in this Settlement Agreement shall be binding on the parties and their successors and assigns.

16. Severability

If any provision of this Release and Settlement Agreement or the application thereof is adjudicated to be void, invalid or unenforceable, such action shall not make the entire Settlement Agreement void, but rather only such provision. All remaining provisions shall remain in full force and effect.

IN WITNESS WHEREAS, the parties hereto have executed this Release and Settlement Agreement.

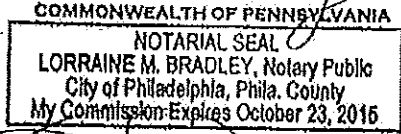
CAUTION: READ BEFORE SIGNING. THIS IS A RELEASE.

Lakisha Briggs
Lakisha Briggs, Plaintiff

09-08-2014
Date

Sworn to and subscribed before me this 8th day of September, 2014.

Lorraine M. Bradley
Notary Public



Crandall O. Jones
Crandall O. Jones
Norristown Municipal Administrator

9/18/14
Date

Crandall O. Jones, Norristown Municipal Administrator, is expressly authorized by Norristown and the other individual Defendants to enter into this Settlement Agreement on their behalves. Crandall O. Jones' signature shall constitute acceptance of the terms of this Settlement Agreement by all Defendants.

Sworn to and subscribed before me this 18th day of September, 2014.

Sandra Felice Grubb
Notary Public

