

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ANGELA GOODMAN,

Plaintiff,

V.

**HOUSING AUTHORITY OF
DEKALB COUNTY and EUGENE
WALKER in his official capacity as its
Executive Director,**

Defendants.

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**CIVIL ACTION NO.
1:17-CV-00504-TWT**

**ANGELA GOODMAN’S BRIEF IN SUPPORT OF MOTION FOR
PARTIAL SUMMARY JUDGMENT**

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**ANGELA GOODMAN’S BRIEF IN SUPPORT OF MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff’s Motion for Partial Summary Judgment should be granted.

Defendants’ decision to terminate Plaintiff and her family from the Section 8 program, causing them to become homeless, violated the Due Process Clause and Eleventh Circuit precedent because Defendants (1) utilized unlawful hearing procedures and (2) presented no probative evidence to meet their burden to show that Plaintiff violated the Section 8 program rules.

INTRODUCTION

Plaintiff Angela Goodman filed this case against the Housing Authority for unlawfully terminating her from the Section 8 program. The Housing Authority claims it terminated Ms. Goodman because she committed damages to her unit

beyond normal wear and tear, but it presented no evidence that she did so. The Housing Authority failed to meet its burden under federal statute, controlling HUD regulations, and its own administrative plan to show Ms. Goodman committed a violation that justified termination. The Housing Authority's decision to terminate Ms. Goodman violated the Due Process Clause under the Fourteenth Amendment to the United States Constitution and the Georgia Constitution. Therefore, the Court should grant Summary Judgment to Ms. Goodman.

SUMMARY OF FACTS

Ms. Goodman and her children lived as tenants in substandard housing on the Section 8 program for years.¹ She repeatedly complained to the Housing Authority and to her landlord about the decay in her house.² Fixtures, appliances, windows, and doors constantly broke, but Ms. Goodman's landlord seldom made timely repairs.³ For several months, she could hear rats scratching behind her walls.⁴ Eventually they burrowed into her home through her carpet and pantry

¹ Plaintiff's Statement of Material Facts not in Dispute ("Facts") ¶¶ 3, 8-13.

² Facts ¶¶ 12, 15, 21.

³ Facts ¶¶ 8-10, 12-14, 19.

⁴ Facts ¶¶ 11.

walls.⁵ Toward the end of her tenancy, she had no working oven, one door that did not lock, and a refrigerator that did not keep food cold.⁶

In August 2016, Ms. Goodman submitted a formal written complaint to the Housing Authority about the unsuitability of her family's living conditions.⁷ The Housing Authority sent its third-party inspection agency, McCright & Associates, to the home.⁸ McCright issued a written report which listed over a page of repairs to be addressed.⁹ Without explanation, some of these repairs had the phrase "tenant charge" next to them.¹⁰ Ms. Goodman understood that "tenant charge" meant the Housing Authority expected her to fix the item, but she did not understand why several of the items were marked as her responsibility.¹¹ The report did not indicate why any items were designated as "tenant charge."¹² Ms. Goodman fixed the outlet cover she broke and removed the private locks she had installed in the bedrooms.¹³

Although Ms. Goodman initiated the complaint, the Housing Authority soon issued *her* a proposed termination notice, allegedly for causing damage beyond

⁵ *Id.*

⁶ Facts ¶¶ 10, 22.

⁷ Facts ¶ 22.

⁸ Facts ¶ 30.

⁹ Facts ¶¶ 30, 34.

¹⁰ Facts ¶¶ 31-32.

¹¹ Facts ¶ 33.

¹² Facts ¶ 32.

¹³ Facts ¶ 38.

normal wear and tear.¹⁴ At the same time, the Housing Authority stopped paying its portion of the rent to the landlord, and eventually terminated the contract with the landlord—for the landlord failing to make its own repairs.¹⁵

When Ms. Goodman attended her informal hearing on the proposed termination, she presented the only first-hand testimony about the conditions in her home.¹⁶ The Housing Authority presented the inspection reports, but neither the inspector, Ms. Goodman's landlord, nor any other witnesses were present.¹⁷ Ms. Goodman denied causing the remaining items listed as tenant charges, namely:

- (1) A smoke detector missing batteries;
- (2) A crack in the window at the top of the front door;
- (3) A missing handle on the front storm door; and,
- (4) A broken drawer in the kitchen.¹⁸

At her reinspection and before her informal hearing, Ms. Goodman replaced the batteries in both smoke detectors.¹⁹ One smoke detector worked and passed the reinspection.²⁰ The other did not work, despite having a new battery.²¹

¹⁴ Facts ¶¶ 21, 37.

¹⁵ Facts ¶¶ 35, 43, 79-80.

¹⁶ Facts ¶¶ 56-64.

¹⁷ Facts ¶¶ 56, 58-60.

¹⁸ Facts ¶¶ 14-17, 20, 62-64.

¹⁹ Facts ¶ 44.

²⁰ Facts ¶ 45.

²¹ *Id.*

After her informal hearing and before her final termination, Ms. Goodman also fixed three of the items on her list, even though she did not cause the damage.²² She purchased and installed a new smoke detector, replaced the cracked front door glass, and purchased and installed a new storm door handle.²³ Because the kitchen drawer was installed incorrectly, and the landlord had unsuccessfully tried to fix it on several occasions, she did not attempt to fix the drawer.²⁴

On November 17, 2016, the hearing officer issued a decision upholding the termination.²⁵ On November 22, 2016, an inspector from McCright returned to Ms. Goodman's home.²⁶ The next day, McCright sent a letter to Ms. Goodman and her landlord stating the house passed inspection.²⁷ On December 1, 2016, the Housing Authority issued a final notice to Ms. Goodman terminating her from the Section 8 program effective January 31, 2017.²⁸ For additional material facts, see Plaintiff's Statement of Material Facts not in dispute.

²² Facts ¶¶ 14-17, 67, 73-77.

²³ Facts ¶¶ 67, 73-77.

²⁴ Facts ¶¶ 14, 78.

²⁵ Facts ¶ 70.

²⁶ Facts ¶ 49.

²⁷ Facts ¶¶ 49-50.

²⁸ Facts ¶ 72.

STATUTORY AND REGULATORY FRAMEWORK

Congress created the Housing Choice Voucher Program (commonly referred to as “Section 8” or the “Section 8 program”) to help low-income families obtain a “decent place to live.”²⁹ Under the program, the Secretary of the U.S. Department of Housing and Urban Development (“HUD”) enters into contracts with public housing agencies (“PHAs”) and funds them to assist qualifying low-income families.³⁰ Each PHA must create an Administrative Plan that complies with controlling HUD regulations, and the regulations require it to follow the plan.³¹

Participants use a voucher to subsidize rental housing with a private landlord. Families pay rent to the landlord based on their income, and the PHA pays the remainder of the contract rent directly to the landlord. Once a landlord agrees to accept the voucher, the landlord signs a contract with the PHA called a Housing Assistance Payments (HAP) contract. The HAP contract specifies rules the landlord must follow to remain on the program, including complying with HUD’s minimum standards for safe and sanitary housing, called the Housing

²⁹ 42 U.S.C. § 1437f(a) (2016).

³⁰ *See* 42 U.S.C. §§ 1437f(b)(1), 1437f(o)(1)(A).

³¹ 42 U.S.C. §§ 1437c-1(b), (l); 24 C.F.R. §§ 982.54(a)-(c).

Quality Standards (HQS).³² The PHA periodically inspects for breaches of HQS, including in response to participants' housing conditions complaints.³³

The HUD regulations governing the Section 8 program specify the limited circumstances under which a PHA can terminate a participant from the program.³⁴

A PHA may only terminate a family for violating specified "family obligations."³⁵

One of those obligations is not to breach the HQS set by HUD.³⁶ A family is responsible for an HQS violation caused by failing to pay utilities, failing to provide and maintain appliances which are to be provided by the tenant, or damaging the unit "beyond normal wear and tear."³⁷

The HUD regulations also delineate the mandatory grievance process.³⁸ A PHA must provide the family with notice of the violation and an opportunity for an informal hearing before terminating a family.³⁹ The participant must have the opportunity to present evidence and question any witnesses at the hearing.⁴⁰ A hearing officer, which can be and often is an employee of the PHA, acts as the

³² 24 C.F.R. §§ 982.401 *et seq.*

³³ 24 C.F.R. §§ 982.405(a), (g).

³⁴ 24 C.F.R. §§ 982.551, 982.552.

³⁵ 24 C.F.R. § 982.552(c)(1)(i).

³⁶ 24 C.F.R. §§ 982.401, 982.551.

³⁷ 24 C.F.R. § 982.404(b).

³⁸ 24 C.F.R. § 982.555.

³⁹ 24 C.F.R. §§ 982.555(a)(1)(v), (a)(2).

⁴⁰ 24 C.F.R. § 982.555(e)(5).

arbitrator. The hearing officer must make factual findings based on a

“preponderance of the evidence presented at the hearing.”⁴¹

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate if the movant shows that no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law.⁴²

Moreover, “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment.”⁴³

The applicable substantive law will govern which facts are material and which are irrelevant.⁴⁴ Once the moving party shows there is no genuine dispute as to any material fact, the non-moving party must then “set forth specific facts showing that there is a genuine issue for trial.”⁴⁵

DISCUSSION

As the Eleventh Circuit has repeatedly held, Ms. Goodman and her family have a protected property interest in their Section 8 voucher.⁴⁶ Therefore, the Housing Authority must provide Ms. Goodman with due process before

⁴¹ 24 C.F.R. § 982.555(e)(6).

⁴² Fed. R. Civ. P. 56(a).

⁴³ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986).

⁴⁴ *Id.* at 248.

⁴⁵ *Id.* at 255 (quotation and footnotes omitted).

⁴⁶ *Basco v. Machin*, 514 F.3d 1177, 1182-83, n.7 (11th Cir. 2008) (holding that the due process protections apply to recipients of section 8 housing assistance who “rely on subsidies to meet their basic need for housing”).

terminating her from the program.⁴⁷ The Housing Authority terminated Ms. Goodman without adequate due process and in violation of 42 U.S.C. § 1983. The Housing Authority violated Ms. Goodman's procedural due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and Art. I, § 1, ¶ 1, of the Georgia Constitution.⁴⁸ It did so by depriving her of the right to confront and cross-examine witnesses against her and by failing to meet its burden to show sufficient evidence that she violated the Section 8 program rules under the Housing Act of 1937⁴⁹ and controlling HUD regulations.

I. The Housing Authority violated due process by relying on hearsay with no indicia of reliability and shifting the burden of persuasion at Ms. Goodman's informal hearing.

A. The Housing Authority based its decision solely on hearsay which was not inherently reliable, violating the precedent in *Basco v. Machin*.

The Eleventh Circuit has consistently placed limits on a PHA's reliance on hearsay in administrative hearings to terminate Section 8 housing assistance.⁵⁰ The

⁴⁷ See *Goldberg v. Kelly*, 397 U.S. 254, 266 (1970) (holding that welfare recipients are entitled to evidentiary hearings with at least minimum due process before their benefits can be terminated).

⁴⁸ *Suber v. Bulloch County Bd. of Educ.*, 722 F. Supp. 736, 744 (S.D. Ga. 1989) (The standard imposed by the due process clause of the Georgia Constitution requires that an agency present "sufficient justification" for its decisions.)

⁴⁹ 42 U.S.C. 1437 *et seq.*

⁵⁰ *Basco*, 514 F.3d at 1182; see also *Ervin v. Hous. Auth. of the Birmingham Dist.*, 281 Fed. Appx. 938, 942 (11th Cir. 2008); *Lane v. Fort Walton Beach Hous. Auth.*, 518 Fed. Appx. 904, 912-13 (11th Cir. 2013).

controlling case in the Eleventh Circuit, *Basco v. Machin*, explains, “there are due process limits on the extent to which an adverse administrative decision may be based on hearsay evidence.”⁵¹ The evidence must have “underlying reliability and probative value” to justify the adverse decision.⁵² To determine if evidence has underlying reliability, a court examines four factors, as first described by the Eleventh Circuit in *J.A.M. Builders v. Herman*: “whether

- 1) [T]he out-of-court declarant was not biased and had no interest in the result of the case;
- 2) [T]he opposing party could have obtained the information contained in the hearsay before the hearing and could have subpoenaed the declarant;
- 3) [T]he information was not inconsistent on its face; and
- 4) [T]he information has been recognized by courts as inherently reliable.”⁵³

In addition, the controlling HUD regulations require that the PHA follow its own Administrative Plan.⁵⁴ Here, the Housing Authority of DeKalb County’s Administrative Plan specifically prohibits the agency from relying on hearsay alone to make an adverse decision in an informal hearing.⁵⁵

⁵¹ *Basco*, 514 F.3d at 1182.

⁵² *Richardson v. Perales*, 402 U.S. 389, 402 (1971); *U.S. Pipe and Foundry Co. v. Webb*, 595 F.2d 264, 270 (5th Cir. 1979) (adopted by the Eleventh Circuit after the circuit split); *Basco*, 514 F.3d at 1182; *Ervin*, 281 Fed. Appx. at 942.

⁵³ 233 F.3d 1350, 1354 (11th Cir. 2000).

⁵⁴ 24 C.F.R. § 982.54(c).

⁵⁵ Facts ¶ 68; Housing Authority of DeKalb County, Administrative Plan (2016).

In *Basco v. Machin*, the Eleventh Circuit considered whether the housing authority could rely on two unauthenticated police reports, each of which consisted of hearsay, to show that an unauthorized person was living with the participants.⁵⁶ The Court found the reports unreliable because the participants did not have the ability to cross-examine either officer who prepared the reports, nor the people who made the hearsay statements contained within the reports.⁵⁷ In *Ervin v. Hous. Auth. of Birmingham Dist.*, the Eleventh Circuit reiterated that “underlying reliability and probative value” of the evidence must be present.⁵⁸ There, the housing authority relied entirely on hearsay when it terminated participants based on a witness description of a letter from a police officer.⁵⁹ The Court found the evidence in *Ervin* had even less reliability and probative value than the unauthenticated police reports in *Basco*.⁶⁰

The Eleventh Circuit again affirmed this standard in *Lane v. Fort Walton Beach Hous. Auth.* when it found in favor of the participants on their due process

⁵⁶ *Basco*, 514 F.3d at 1182.

⁵⁷ *Basco*, 514 F.3d at 1183.

⁵⁸ 281 Fed. Appx. 938, 942 (11th Cir. 2008) (vacated and remanded to the district court).

⁵⁹ *Ervin*, 281 Fed. Appx. at 942.

⁶⁰ *Id.*

claim.⁶¹ There, the Court held that a printout from the sex offender registry showing an individual had used the participants' address, without identifying the length of his stay, was constitutionally inadequate to terminate assistance when the participants denied the person lived there.⁶² The Court found that the housing authority's reliance on hearsay without any indicia of reliability denied participants the opportunity to confront and cross-examine witnesses against them.⁶³

Here, the Housing Authority of DeKalb County terminated Ms. Goodman's voucher alleging she damaged the unit beyond normal wear and tear,⁶⁴ but it relied on hearsay without adequate indicia of reliability in violation of the *Basco* standard. The Housing Authority's only evidence supporting its informal hearing decision was unauthenticated inspection reports from McCright, the third-party contractor who inspected Ms. Goodman's home.⁶⁵ Like the police reports in *Basco*, the inspection reports fail the "underlying reliability" test in *J.A.M. Builders*. The

⁶¹ 518 Fed. Appx. 904, 913 (11th Cir. 2013) (reversing the district court's 12(b)(6) dismissal of Plaintiff's 1983 claim for violations of procedural due process).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Facts ¶ 37.

⁶⁵ Facts ¶ 56.

inspector who prepared the reports was not present at the informal hearing,⁶⁶ and Ms. Goodman had no opportunity to subpoena and cross-examine him.⁶⁷

Furthermore, the inspection reports used here have even less reliability than unauthenticated police reports. The evidence is similar to *Ervin* and *Lane*,⁶⁸ where the Court found: 1) an affidavit describing a police letter and 2) a printout from the sex offender registry, respectively, even less reliable than the two police reports in *Basco*. Here, the inspection reports are even less reliable than police reports, and more similar to the sex offender registry printout in *Lane*. The reports contain no narrative statement providing context or facts, and fail to give a single reason supporting the “tenant charge” designations.

The Housing Authority’s only evidence supporting the decision was hearsay without any indicia of reliability; thus, it was insufficient to justify the termination.

B. The Housing Authority unlawfully shifted the burden of persuasion to Ms. Goodman, violating the precedent in *Basco*.

Under Eleventh Circuit precedent, the Housing Authority bears the burden of persuasion in informal hearings, and must “initially present sufficient evidence to establish a prima facie case” to justify termination.⁶⁹ Because the Housing

⁶⁶ Facts ¶ 58.

⁶⁷ Facts ¶ 69.

⁶⁸ 281 Fed Appx. at 942.

⁶⁹ *Basco*, 514 F.3d at 1182; *see also Ervin*, 281 Fed. Appx. 941-42.

Authority did not present any reliable evidence sufficient to establish a rule violation, the burden of production never should have shifted to Ms. Goodman. Ms. Goodman's undisputed firsthand testimony showed she did not cause the items to break.⁷⁰ She was the only witness at the hearing with firsthand knowledge of the conditions in her home.⁷¹ The inquiry should have ended there, and the Housing Authority should have canceled Ms. Goodman's proposed termination.

Instead, the Housing Authority's 30(b)(6) representative, Kentrye Cornelious, who also acted as the compliance officer at the hearing, penalized Ms. Goodman for failing to provide evidence to refute the Housing Authority's unsupported claims. For instance, Ms. Cornelious emphasized that Ms. Goodman only testified about the kitchen drawer installation defect and "did not provide any documentation."⁷² Ms. Cornelious also complained that Ms. Goodman did not bring evidence showing she notified her landlord about the repairs. As Ms. Cornelious explained, "Without Ms. Goodman being able to show documentation that she told her landlord to give the landlord an opportunity to correct the issue, it's Ms. Goodman's fault."⁷³ The Housing Authority's own documentation shows Ms. Goodman repeatedly complained to the Housing Authority and to her landlord

⁷⁰ Facts ¶¶ 61-64.

⁷¹ Facts ¶¶ 57-61.

⁷² Cornelious Dep. 102: 9-14 (Attached to Facts as Ex. B).

⁷³ Cornelious Dep. 104: 25; 105: 1-3.

about repair problems at her home.⁷⁴ Yet, Ms. Cornelious placed the blame for the repairs on Ms. Goodman because she did not bring physical records to the hearing of complaints she had previously submitted to the Housing Authority.

Ms. Cornelious also penalized Ms. Goodman for failing to contact the inspection agency directly to dispute responsibility for certain repairs prior to the hearing,⁷⁵ suggesting it was too late to do so at the hearing. Yet, nowhere does the Housing Authority inform participants to contact McCright to refute the report's designation of "tenant charge." Nor does the inspection report or any other material suggest that failure to do so will be held against the tenant. The inspection report merely states, "If you have questions regarding this letter or the inspection results, please call..."⁷⁶ This burden shifting violated Eleventh Circuit precedent.

⁷⁴ Facts ¶¶ 21-22.

⁷⁵ Cornelious Dep. 135:14-17 ("If Ms. Goodman disagreed with the inspection results, she would have — I'm expecting Ms. Goodman to contact the numbers that are afforded to her on her documentation.")

⁷⁶ Facts ¶ 30.

II. The Housing Authority did not meet its burden with sufficient evidence showing that Ms. Goodman violated any rule justifying terminating her from the Section 8 program.

In compliance with due process, the Housing Authority can only terminate a participant if it has met its burden of persuasion with sufficient, probative evidence under *Basco*.⁷⁷ The Housing Authority's evidence must be "legally sufficient to establish a prima facie case" that the participant violated a program rule.⁷⁸

Only certain acts (or failures to act) violate the section 8 program rules under the controlling HUD regulations. The Housing Authority initially proposed to terminate Ms. Goodman for missing an inspection *and* for violating the family obligations by damaging the unit beyond normal wear and tear.⁷⁹ The Housing Authority has repeatedly asserted that it based the final termination solely on the repair allegation; they excused the missed inspection because Ms. Goodman's son was hospitalized.⁸⁰ Thus, to meet its burden to justify terminating Ms. Goodman, the Housing Authority was required to show that:

- (1) Ms. Goodman committed damages to the unit; AND,
- (2) Those damages exceeded normal wear and tear; AND,
- (3) Those damages caused breaches of the Housing Quality Standards.⁸¹

⁷⁷ *Basco*, 514 F.3d at 1182-83.

⁷⁸ *Id.* at 1183.

⁷⁹ Facts ¶ 37.

⁸⁰ *See, e.g.* Hill Dep. 26:8-18; Cornelious Dep. 51:15-24.

⁸¹ 24 C.F.R. § 982.404(b)(1)(iii).

To prevail on her Motion for Summary Judgment, Ms. Goodman need only show the Housing Authority failed to meet its burden as to any one of the elements. Yet, the Housing Authority presented no evidence to meet its burden on any of the elements. Even if the Housing Authority had shown Ms. Goodman committed a technical violation, however, the termination was arbitrary and capricious given the circumstances and facts in this case.

A. The Housing Authority did not present any evidence that Ms. Goodman committed any damages beyond normal wear and tear.

1. There is no evidence that Ms. Goodman committed any damage.

The only evidence the Housing Authority relied on to support the termination—the inspection reports—did not show that Ms. Goodman committed damage. At most, the hearsay contained within the reports shows there were some items inside the home that needed repair. Ms. Goodman does not dispute the items were broken, and she admits the four items remained broken as of her informal hearing. Yet, the report assigns responsibility to Ms. Goodman for these repairs by placing the phrase “tenant charge” next to the items—devoid of a single note, observation, or finding to show whether or how she caused damage.

The inspection reports here are similar to the police reports in *Basco*; they do not establish that Ms. Goodman violated the program rules. In *Basco*, the participants allegedly violated the program rules by having an unauthorized

occupant at their home.⁸² The Court determined the police reports did not establish a prima facie case that the alleged unauthorized person was more than a visitor, and thus did not substantiate the claim that the family violated the program rules.⁸³ Similarly, because the inspection reports here do not establish that Ms. Goodman committed any damage, and the Housing Authority presented no other evidence, the Housing Authority did not establish its prima facie case.

The Housing Authority's 30(b)(6) representative admitted the agency never found Ms. Goodman committed the violation for which it terminated her—that is, damaging any items.⁸⁴ The hearing officer likewise admitted she never considered whether Ms. Goodman caused the damage to the smoke detector, or any other item: “It was never any question of whether she damaged it...It was an outstanding item. I didn't look at how it was damaged or if she damaged it. It was an outstanding tenant item.”⁸⁵ The hearing officer's decision does not contain a single finding that Ms. Goodman caused any of the damaged items.⁸⁶

The hearing officer also admitted she never determined whether any of the items listed as “tenant charge” on the inspection reports were, in fact, Ms.

⁸² *Basco*, 514 F.3d at 1180.

⁸³ *Basco*, 514 F.3d at 1183.

⁸⁴ Cornelious Dep. 205:21-206:3.

⁸⁵ Hill Dep. 64:2-4,16-19.

⁸⁶ Hearing Decision, Doc. 5-23, p. 2, 6.

Goodman's responsibility under the Housing Quality Standards: "I cannot answer why it is a tenant responsibility. I'll just adhere to the items that are listed under tenant responsibility. That's an HQS question."⁸⁷ Yet, the hearing officer had to make that legal determination to terminate Ms. Goodman's voucher.

The hearing officer failed to perform her primary function as an adjudicator. She was tasked with making factual findings and legal conclusions, but failed to do either. Ms. Goodman testified she had not damaged the unit, but the hearing officer ignored her firsthand testimony in favor of non-probative hearsay from the inspector. Moreover, the hearing officer merely accepted as true the unsupported legal conclusions that Ms. Goodman was responsible for the "tenant charge" items.

Because the inspection reports presented at the informal hearing had no probative value to establish that Ms. Goodman committed any damage, the Housing Authority presented no other evidence that Ms. Goodman committed damage, and there was no finding that she committed damage, the Housing Authority failed to "establish a prima facie case" under *Basco*.⁸⁸

⁸⁷ Hill Dep. 57: 11-14.

⁸⁸ *Basco*, 514 F.3d at 1183.

2. There is no evidence that any of the remaining repairs exceeded normal wear and tear.

Even if the Housing Authority had shown Ms. Goodman caused damage, it did not meet its burden under *Basco* with any evidence showing damage *beyond normal wear and tear*.

The Georgia Court of Appeals describes “normal wear and tear” in *Raybestos-Manhattan v. Friedman*.⁸⁹ There, the landlord sued a commercial tenant for the condition of a space used as a factory.⁹⁰ The court explained that normal wear and tear “includes that usual deterioration which results from the day to day use of the premises and from lapse of time.”⁹¹ For example, “beams which decayed not due to the negligence of the tenant but to its normal use as a mill were not damages for which recovery could be had.”⁹² Damages beyond “normal wear and tear” only include items broken through the tenant’s neglect or intentional conduct.

Ms. Goodman did not commit any damage beyond normal wear and tear. Rather, the property was deteriorating, as evidenced by the numerous complaints Ms. Goodman made over the years.⁹³ And because Ms. Goodman rented the property for over four years, normal wear and tear would be expected to exceed

⁸⁹ 156 Ga. App. 880, 881 (1981).

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Facts ¶¶ 12, 21-22.

that of a shorter tenant. It is the Housing Authority's burden to show that Ms. Goodman was negligent in her use of the premises, or intentionally caused damage that exceeded normal wear and tear. The Housing Authority offered no evidence to suggest either. Therefore, the Housing Authority has not met its burden.

B. Ms. Goodman did not cause a breach of the Housing Quality Standards.

The Housing Quality Standards protect participants from living in uninhabitable and unsafe conditions, and prevent federal funds from "being squandered on landlords who provide substandard housing."⁹⁴ The undisputed evidence shows that Ms. Goodman experienced deplorable conditions for years. She complained repeatedly to both her landlord and the Housing Authority about serious issues such as leaks, unusable appliances, unsecured doors, and vermin.

The Housing Quality Standards (HQS)⁹⁵ do not govern all repairs that may exist in a home, but only those "key aspects of housing quality."⁹⁶ The HQS rules relevant here are:

- "The unit must have space for the storage, preparation, and serving of food."

⁹⁴ 24 C.F.R. §§ 982.1(a)(1), (2); 24 CFR § 982.401; *Peart v. D.C. Hous. Auth.*, 972 A.2d 810, 2009 D.C. App. LEXIS 185, n. 5 (D.C. 2009).

⁹⁵ 24 C.F.R. § 982.401.

⁹⁶ 24 C.F.R. § 982.401(a)(2)(ii).

- “The exterior doors of the dwelling unit must be lockable. Exterior doors are doors by which someone can enter or exit the dwelling unit.”
- The dwelling unit must have at least one working smoke detector on each level.⁹⁷

The only item even listed under HQS is the failure to have a working smoke detector on each level of the house. Ms. Goodman concedes the smoke detector on one level did not work; yet, the Housing Authority can point to no legal authority which places the burden for a broken smoke detector on Ms. Goodman. As Ms. Goodman has testified repeatedly and consistently, she replaced the batteries in both smoke detectors, but one still did not work.⁹⁸ After the hearing and before she was terminated, Ms. Goodman even bought a new smoke detector at her own cost, and installed it on the wall next to the broken one.⁹⁹

No evidence exists that any other items listed as “tenant charge” constituted a breach of HQS. No evidence exists that the crack in the door window prevented it from being locked. The kitchen drawer similarly did not cause a breach, as it did not prevent the family from having other space to store, prepare, or serve food. The missing handle on the storm door could not have caused a breach of HQS, either, because it was installed outside the main door, which itself locked.

⁹⁷ *Id.* at (c)(2)(iii), (d)(2)(iv), (n)(1).

⁹⁸ Facts ¶¶ 44-45.

⁹⁹ *See* Doc. 5-22.

Because Ms. Goodman did not cause any breach of HQS, the Housing Authority's decision to terminate Ms. Goodman was unlawful.

C. The Housing Authority's decision was arbitrary and capricious because termination was a disproportionate penalty under the circumstances.

The Housing Authority failed to show any alleged breaches were serious enough to warrant terminating Ms. Goodman and her family from the section 8 voucher program. Under the circumstances, the Housing Authority's decision was arbitrary and capricious because permanently terminating the family was disproportionate to the alleged offense.

The Eleventh Circuit has no case on point, but similar cases from other states are instructive. For instance, in *Hassan v. Dakota County Cmty. Dev. Agency*, the Minnesota Court of Appeals found that the housing authority could only terminate a section 8 participant for "serious conduct," and so failing to provide proper recertification forms did not justify termination.¹⁰⁰ Similarly, New York's Appellate Division, in *Gist v. Mulligan*, considered whether failing to recertify and vacating the unit without notifying the housing authority warranted termination. It found that termination in that case was "so disproportionate to the offenses committed as to be shocking to one's sense of fairness."¹⁰¹

¹⁰⁰ A08-0373 Unpub. LEXIS 204 *6 (Minn. App. 2009)

¹⁰¹ 886 N.Y.S.2d 172, 173 (N.Y. App. Div. 2009).

Here, the Housing Authority failed to consider that the alleged damages, even if true, were too trivial to justify termination. Although the hearing officer would have upheld the termination for any one of the four items alone,¹⁰² Congress, in creating the program, could not have contemplated that an entire family would permanently lose its housing assistance for a repair as minor as a broken kitchen drawer. In fact, the repairs were so minor that Ms. Goodman was able to fix three of the items for approximately \$55,¹⁰³ far less than her \$400 security deposit. Presumably her landlord could have done the same.

The Housing Authority's own documentation shows that termination was unnecessary and unwarranted. An inspection report shows the house passed inspection on November 23, 2016, two months prior to Ms. Goodman's effective termination date.¹⁰⁴ Moreover, the HAP contract with the landlord had terminated for the landlord's failure to repair.¹⁰⁵ Ms. Goodman could have moved with her voucher, preventing the Housing Authority from making payments to a home that had been unsuitable for months. Yet, there is no indication the Housing Authority took any of those circumstances into account. The Housing Authority's penalty was so out of proportion to the alleged offense as to be arbitrary and capricious.

¹⁰² Hill Dep. 37:14-38:2.

¹⁰³ Facts ¶¶ 74, 76-77.

¹⁰⁴ Facts ¶¶ 49-50.

¹⁰⁵ Facts ¶ 79.

CONCLUSION

There are no material facts in dispute which support the Housing Authority's termination of Ms. Goodman's Section 8 voucher. Therefore, Ms. Goodman respectfully requests that the Court grant her Motion for Summary Judgment and schedule an evidentiary hearing to determine damages.

Respectfully submitted this 20th day of February, 2018.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that Plaintiff's Brief in Support of Motion for Partial Summary Judgment has been prepared in Times New Roman (14 point) font, as approved by the Court in L.R. 5.1.B.

This 20th day of February, 2018.

/s/ Lindsey M. Siegel

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CERTIFICATE OF SERVICE

I certify that on this day a true and correct copy of Plaintiff's Brief in Support of Motion for Partial Summary Judgment was sent through the electronic filing system to counsel of record for Defendants:

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