

Domestic Violence and the Fair Housing Act: A Toolkit for Grantees



Dear Legal Assistance for Victims (LAV) Grantees:

The National Housing Law Project has created the attached advocate toolkit outlining how the Fair Housing Act can help survivors of domestic violence obtain and maintain housing.

Fair housing laws prohibit discrimination on the basis of membership in a protected group. Specifically, the Fair Housing Act (FHA) makes it unlawful to discriminate on the basis of race, color, religion, sex, familial status, disability, or national origin. Advocates have used the FHA's prohibition of discrimination based on sex to ensure that survivors of domestic violence are not denied access to or evicted from housing. Fair housing is a vital tool for protecting housing rights because, unlike the housing protections of the Violence Against Women Act, it applies to virtually all types of housing at all steps of the process.

The toolkit is designed to provide advocates with an overview of the FHA and strategies that advocates have used to bring fair housing claims on behalf of survivors of domestic violence. We hope that you find these materials helpful in aiding your clients. Should you have any questions regarding the FHA or survivors' housing rights in general, please contact:

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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.



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 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

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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:

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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:

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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 POLICY

Purpose

This Policy is intended to promote awareness of domestic violence, to prevent discrimination against victims of domestic violence, and to assist tenants who may have been the victims of such violence.

Definitions

A victim of domestic violence is defined as an individual who has been subjected to acts or threatened acts of violence or other acts or threatened acts of criminal conduct (except acts of self-defense), committed by any person who is currently or was formerly related to the victim, or with whom the victim is living or has lived, or with whom the victim is involved or has been involved in an intimate relationship.

For the purposes of this Policy, Landlord shall be defined as H.A. Housing, L.P. and/or Urban Property Management, Inc. and their employees and agents with respect to all federally subsidized Section 8 family housing which they own and/or manage.

Policy

I. Protection from Discrimination

Landlord shall not refuse to rent to, and shall not evict, or otherwise discriminate against an individual on the basis of sex in any of the residential rental properties it owns and/or manages. In particular, Landlord shall not refuse to rent to, evict, or otherwise discriminate against an individual on the basis that such individual is a victim of domestic violence or on the basis that Landlord believes that person to be a victim of domestic violence. Landlord also shall not refuse to rent to, and shall not evict, or otherwise discriminate against a victim of domestic violence on the basis of acts committed by the perpetrator of domestic violence, regardless of whether or not the perpetrator of domestic violence is a resident in the victim's household.

II. Emergency Situations

- A. Where a tenant claims that he/she or his/her children are in imminent physical danger due to the threat of or actual domestic violence, the tenant may request a transfer to a different residential property owned or managed by Landlord. Landlord may require that the tenant provide evidence of such actual or threatened domestic violence. The evidence to be provided will take the form of one of the following, to be chosen by the tenant: a police or court record, or a statement from a member of the clergy, a victim services provider or a medical professional.
- B. A tenant shall submit such an emergency transfer request to the Resident Manager, who, once the request is received, shall complete and submit the

appropriate form within one business day to the District Manager for consideration.

- C. A tenant who qualifies for a transfer under this Policy will be afforded a preference and moved to the top of the wait list for a suitable unit not already committed to another applicant.
- D. Landlord shall make a diligent and good faith effort to transfer the tenant to a vacant unit in a different Section 8 family property owned and/or managed by Landlord, appropriate for the needs of the tenant, within five business days of receipt of the tenant's transfer request. It is understood, however, that the existence of this policy does not ensure or otherwise guarantee that such a unit may be available. If such a unit is not available within five business days of receipt of the tenant's request, Landlord shall continue to make a diligent and good faith effort to transfer the tenant to an appropriate vacant unit in a different Section 8 family property as one becomes available, and shall determine availability at least once every five business days while the transfer request remains in effect.
- E. Tenant's emergency transfer request shall remain in effect for a period not to exceed 60 days. The tenant may renew the emergency transfer request at the end of 60 days upon submission of further evidence as described in Paragraph II(A).
- F. Upon transfer, the tenant will enter into a new lease for the unit into which he/she has been transferred.

III. Confidentiality

If a tenant reports to Landlord that she or he is a victim of domestic violence or otherwise seeks assistance under this Policy, Landlord will take reasonable steps to protect the confidentiality of the reporting tenant, informing other persons only to the extent reasonably necessary to protect the tenant or others and to comply with this Policy and applicable law. Nothing in this Policy is intended to prevent Landlord from contacting the appropriate authorities if Landlord reasonably believes the safety of tenants and/or the residential property is at risk. Where practicable, Landlord will provide prior notice to the reporting tenant that Landlord intends to contact the authorities about the domestic violence related matters.

IV. Complaints Related to Violation of This Policy

Tenants and rental applicants who believe that a violation of this Policy may have occurred should report such circumstances to the Resident Manager and should fill out a complaint form maintained at the rental office. The Resident Manager shall promptly provide the completed complaint form to the District Manager. Landlord shall investigate the complaint and report Landlord's findings to the complaining individual within thirty days of the Resident Manager's receipt of the complaint form.

V. Notice to Tenants

- A. Landlord shall post in the rental office of each residential property that it owns or manages a notice of this Policy. In addition to the rental office, the notice also shall be posted in at least one other highly visible location in each residential property that Landlord owns or manages which could include, but is not limited to, bulletin boards, common areas, elevators, or laundry rooms. The notice shall read as follows:

NOTICE TO VICTIMS OF DOMESTIC VIOLENCE

The owner and managers of this property have a policy that no person will be denied any housing benefit or discriminated against on the basis of sex, including being a victim of domestic violence. This policy includes protection of a tenant who is a victim of domestic violence from eviction because of the domestic violence, even where the perpetrator of the violence is or was a member of a tenant's household. This policy also provides that a tenant can request a transfer to another subsidized complex if the tenant is in imminent danger because of domestic violence.

To complain of discrimination on the basis that you are a victim of domestic violence or to request an emergency transfer because you are in imminent danger due to domestic violence, see the Resident Manager to obtain the appropriate form. Once you return a completed discrimination complaint form to the Resident Manager, your Landlord must respond to your complaint within thirty days. Once you return a completed transfer request form to the Resident Manager, your Landlord will promptly begin a search for an appropriate vacant unit. You may be asked to provide evidence of the domestic violence.

If you are a victim of domestic violence and you would like help addressing your situation, you may contact the National Domestic Violence Hotline: 1-800-799-SAFE (7233), TTY 1-800-787-3224.

If you would like legal assistance regarding a domestic violence situation or housing discrimination, you may also contact the Colorado Legal Services office in Denver at: 303-837-1313 (representatives can direct you to the local Colorado Legal Services office nearest you; you can also find contact information for all Colorado Legal Services offices online, at <http://www.coloradolegalservices.org>).

- B. Landlord shall distribute a copy of the notice set forth in Section V(A) to all tenants currently living in Section 8 family housing owned or managed by Landlord by placing the notice under the door of each tenant or posting it on the door, if necessary. Landlord also shall provide one copy of the notice to each new tenant upon signing of the lease.

VI. Training

All employees of Landlord who will be responsible for implementation of any aspect of this Policy shall receive training that provides a basic understanding of domestic violence, relevant fair housing laws and regulations, and the substance and implementation of this Policy. All other employees of Landlord who interact with tenants (i.e., maintenance, housekeeping) will receive training that provides a basic understanding of domestic violence as a component of and at the same time that they receive other training from Landlord on fair housing laws and issues.

VII. Governing Law

It is understood that Landlord and this Policy are subject to all applicable state and federal laws, regulations, and rulemaking. In the event of an inconsistency between this Policy and applicable state and federal laws, regulations, and rulemaking, the latter will control.

**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
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(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

OFFICERS AND DIRECTORS
NADINE STROSSEN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

MARK ZACKS
TREASURER

Dear Ms. Waters:

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).

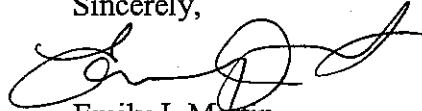
Similarly, in a federal case in Oregon litigated by the ACLU Women's Rights Project, the U.S. Department of Housing and Urban Development determined that when an apartment management agency takes action against an individual based upon her status as a victim of domestic violence, it discriminates on 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

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION

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).

//

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

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Attorneys for Respondent-Tenant

TO: Tennenbaum & Berger LLP
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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,

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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

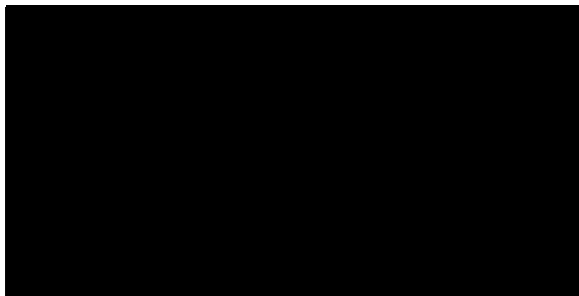
HOUSING DISCRIMINATION COMPLAINT

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.