PRRAC
Poverty & Race
Research Action Council

Survey of source of income caselaw involving insurance discrimination under the Fair Housing Act and state SOI laws

Caleb Hersh, PRRAC Law & Policy Intern
October 2023

This memorandum summarizes caselaw arising under the federal Fair Housing Act (FHA) and state source-of-income discrimination (SOI) statutes that involve claims against insurance companies who refuse to issue them policies or subject them to higher premiums because they rent to Housing Choice Voucher (HCV) recipients.

I. Claims Under the Federal Fair Housing Act

The Fair Housing Act makes it unlawful to "otherwise make unavailable or deny" housing to any person because of membership in a protected class. 42 U.S.C. § 3604(a). The Department of Housing and Urban Development (HUD) has issued regulations interpreting this statutory text to encompass "[r]efusing to provide . . . *property or hazard insurance* for dwellings or providing such . . . insurance differently because of" protected class membership. 24 C.F.R. § 100.70(d)(4) (2023) (emphasis added). As a result, several courts have sustained FHA claims brought by landlords and civil rights organizations against property insurance companies refusing to issue them property insurance because they rent to HCV recipients, who are disproportionately people of color.

In *National Fair Housing Alliance v. Travelers Indemnity Co.*, 260 F. Supp. 3d 20 (D.D.C. 2017), the District Court for the **District of Columbia** denied a motion to dismiss by a defendant insurance company in an FHA case brought by a fair housing advocacy organization challenging the company's refusal to issue homeowners' insurance policies to landlords who rented to Section 8 tenants. *See id.* at 22. The plaintiff organization argued the because approximately ninety-two percent of D.C.'s Section 8 recipients were Black, Travelers' refusal to issue insurance policies to landlords who rented to Section 8 tenants discriminated against Black would-be tenants, and injured them as a result. *See id.* at 23. Because insurance was necessary to get a mortgage and thus a prerequisite to ownership for most landlords, *see id.* at 30, the court agreed that the plaintiff had plausibly made out a claim that could survive the "robust causality" test required to establish disparate impact liability under the FHA. *See id.* at 30–31 (quoting *Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 542 (2015)).

In an oral decision, the District Court for the Northern District of **California** denied a defendant insurance company's summary judgment motion on an FHA claim a landlord had brought regarding its refusal to renew the landlord's policy because the landlord rented to Section 8 tenants. *See* Transcript of Proceedings, *Jones v. Travelers Cas. Ins. Co. of Am.*, No. C–13–02390 (N.D. Cal. May 7, 2015), 2015 WL 5091908. The landlord asserted disparate treatment, disparate impact (pre-*Inclusive Communities*), and interference theories of FHA liability. *Id.* at *1. The court was unconvinced by the insurance company's argument that the landlord could not claim injury under the FHA on the disparate treatment theory because the landlord was not a protected class member. *See id.* ("Under the Act, any person harmed by discrimination, whether or not the

target of the discrimination, can sue to recover for his or her own injury."). In addition, the court found that Jones had sufficiently rebutted Travelers' assertion that the "no Section 8" underwriting policy was legitimately motivated by unique risks that such tenants play, rather than by impermissible stereotyping. *Id.* at *2 ("Travelers contends that Section 8 tenants provide unique risks regarding property maintenance, cash flow, and renter's insurance requirements . . . . But Travelers does not collect or consider similar information regarding tenants who do not receive Section 8 subsidies . . . .").

The District Court for the District of **Connecticut** denied an insurance company's motion to dismiss a putative class action brought against them by landlords and civil rights organizations alleging that their policy of denying landlords insurance for renting to Section 8 tenants violated the FHA. *See Viens v. Am. Empire Surplus Lines Ins. Co.*, 113 F. Supp. 3d 555, 573 (D. Conn 2015). In a pre-*Inclusive Communities* decision, the court held that the plaintiffs had raised a plausible disparate impact claim, given that *all* of the Section 8 tenants to whom the landlords had rented before their insurance policies were not renewed were either Black or Latino. *See id.* at 558. The court held that, though voluntary non-participation in Section 8 was a legitimate business reason that could rebut a claim of disparate impact discrimination against a landlord, the same logic "does not necessarily extend to a landlord's insurers." *Id.* at 572. Furthermore, the court held that property insurance fell within the FHA's definition of a "residential real estate-related transaction," making denial of insurance a covered event. *Id.* at 571 (quoting 42 U.S.C. § 3605(a)).

II. Claims Under State Source-of-Income Discrimination Laws

Source-of-income discrimination laws forbid housing discrimination on the basis of "lawful source of income." *See, e.g.*, Conn. Gen. Stat. Ann. § 46a-64c(a). Based on this language, some of the same court rulings that allowed landlord-plaintiff FHA claims against property insurers who denied them policies based on their renting to HCV recipients to proceed, also allowed parallel claims to proceed under state source-of-income discrimination laws.

In *National Fair Housing Alliance*, the court interpreted the District of Columbia Human Rights Act (DCHRA), which prohibited "refus[ing] to . . . provide title or other insurance relating to the ownership or use of any interest in real property" because of source of income. 261 F. Supp. 3d at 35 (quoting D.C. Code § 2–1402.21(a)(3)). The court concluded that there was "no serious question" that the provision applied to the denial of homeowners' insurance. *Id.* Furthermore, even if the heightened pleading standard of *Inclusive Communities* applied to disparate impact claims under the DCHRA (an open question), the court had already concluded that the plaintiff had satisfied it with respect to the FHA claim, and thus sustained it with respect to the disparate impact DCHRA claim. *Id.*

In *Viens*, the court considered a parallel claim brought under the Connecticut Fair Housing Act (CFHA), which prohibited discrimination on the basis of source of income in any "residential real-estate-related transaction[] . . . or in the terms and conditions of such a transaction." 113 F. Supp. 3d at 560 (quoting Conn. Gen. Stat. Ann. § 46a-64c(a)(7)). The court concluded that the CFHA covered landlord claims against insurers because the statute granted a right of action to "[a]ny person claiming to be aggrieved by a violation." *Id.* at 561 (quoting Conn. Gen. Stat. Ann. § 46a-98a). The court also concluded that the plaintiffs had plausibly asserted a discriminatory injury to HCV recipients as the CFHA required, because "if landlords are forced to pay a financial penalty for renting to Section 8 tenants, they will be less likely to participate in the program which would result in less housing being available to Section 8 participants." *Id.* at 566.

In another case involving the CFHA, a Connecticut trial court allowed a discrimination suit by a landlord against two homeowners' insurance companies to proceed. *See Francia v. Mount Vernon Fire Ins. Co.*, No. CV084032039S, 2012 WL 1088544 (Conn. Super. Ct. Mar. 6, 2012). The insurance company had a practice of refusing to issue insurance policies to landlords for whom more than twenty percent of their tenants were HCV recipients, and charging higher premiums to landlords who rented to any Section 8 tenants at all. *Id.* at *1. The defendant moved to dismiss the claims for violations of CFHA Sections 46a-64c(a)(2)–(3), which respectively forbid source-of-income discrimination in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services and facilities in connection herewith" and in "mak[ing], print[ing], or publish[ing] . . . any notice, statement, or advertisement with respect to the sale or rental of a dwelling." *Id.* at *4 (quoting Conn. Gen. Stat. Ann. §§ 46a-64c(a)(2)–(3)). Surveying analogous federal FHA caselaw, the court concluded that insurance was a "service" in connection with the sale or rental of a dwelling, and that insurance discrimination against landlords caused an injury to Section 8 tenants by "adversely impact[ing] the availability of low-income housing." *Id.* at *6. Similarly, the court allowed the publication claim could move forward after surveying federal FHA caselaw, concluding that insurance quotes were "statements" that "expressed a preference against tenants whose lawful source of income included housing vouchers" for the purposes of the CFHA. *Id.* at *7.