

CITY OF PHILADELPHIA
COMMISSION ON HUMAN RELATIONS

TOMIKA ANGLIN,
Complainant,

v.

PCHR CHARGE No. 2019-08-12-2005

GINARK INVESTMENTS
& MANAGEMENT LP,
Respondent.

COMPLAINANT TOMIKA ANGLIN'S REBUTTAL AND POSITION STATEMENT

Complainant Tomika Anglin hereby submits the following rebuttal and position statement:

1. Denied.
2. Admitted.
3. Denied. Complainant lacks the requisite knowledge to confirm this statement.
4. Denied. Complainant lacks the requisite knowledge to confirm this statement.
5. Denied. Ginark Investments discriminated against Ms. Anglin when it told her via text message that it was not accepting vouchers. Complainant lacks the requisite knowledge to confirm the remainder of this statement and therefore it too is denied.
6. Denied. Ginark Investments discriminated against Ms. Anglin when it told her via text message that it was not accepting vouchers. Complainant lacks the requisite knowledge to confirm the remainder of this statement and therefore it too is denied.
7. Denied. Ginark Investments responded to Ms. Anglin's inquiry via text, asked her if she was Section 8, and then told her it was not accepting vouchers.
8. Admitted.
9. Admitted in part and denied in part. Complainant lacks knowledge to confirm the

assertion that Ginark owns or manages fewer than 300 properties.

10. Denied.

11. Denied.

12. Denied. Ginark Investments responded to Ms. Anglin's inquiry via text, asked her if she was Section 8, and then told her it was not accepting vouchers.

13. Denied.

14. Denied.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

19. Denied.

20. Denied.

21. Admitted.

22. Denied. Ginark Investments responded to Ms. Anglin's inquiry via text, asked her if she was Section 8, and then told her it was not accepting vouchers. Complainant has no knowledge as to whether the Property had already been leased to a different tenant.

23. Denied.

24. Denied.

25. Denied.

26. Denied. Ginark Investments discriminated against Ms. Anglin when it told her via text message that it was not accepting vouchers. Complainant lacks the requisite knowledge to confirm the remainder of this statement and therefore it too is denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied. Ginark Investments discriminated against Ms. Anglin when it told her via text message that it was not accepting vouchers.

31. Denied.

32. Denied. Ginark Investments discriminated against Ms. Anglin when it told her via text message that it was not accepting vouchers.

33. Denied. Ginark Investments discriminated against Ms. Anglin when it told her via text message that it was not accepting vouchers.

POSITION STATEMENT

Tomika Anglin was discriminated against by Ginark because she was a housing choice voucher holder. Philadelphia law prohibits this exact kind of discrimination based on one's source of income. Vigorous enforcement of the Fair Practices Ordinance and, in particular, the source of income discrimination prohibition, is necessary to ensure that low-income Philadelphia families can access safe, decent, and affordable housing as intended by the Housing Choice Voucher program. And, with black families making up 80% of voucher holders in the city, compared to approximately 45% of the overall renter population, ensuring landlord compliance with the source of income provision of the ordinance is both a racial and economic justice issue that the city can and must combat.

I. Ms. Anglin was the victim of source of income discrimination, which is illegal under Philadelphia law.

Ms. Anglin had been living in the same home in South Philadelphia since 1995. Since that time, she has always used a housing choice voucher. Ms. Anglin's current voucher pays \$1,100 to her landlord for a three-bedroom home plus a \$45 utility allowance. Her tenant portion of the rent is \$0. In

2014, her home of twenty years which she rented was sold to a new owner. Ms. Anglin developed a cordial relationship with the new landlord and his property management company. In December 2017, the new landlord filed with the Philadelphia Housing Authority (“PHA”) to increase Ms. Anglin’s rent. Ms. Anglin, per PHA procedure, acknowledged in writing that her share of rent may go up accordingly. On February 2, 2019, Ms. Anglin was given a 60-day Notice to Vacate, timed to be exactly 60 days before April 1, 2019, when the lease would otherwise renew.

Ms. Anglin began her search for new housing in the Spring of 2019. She used several websites, including Craigslist and GoSection8.com, to find a suitable rental property. On May 20, she found a listing on GoSection8.com for a property located at 2219 Winton Street, Philadelphia, PA 19145 (“the Property”). The listing said “text for immediate showing (267) 753-6769.” *See* Ex. A, Zumper Webpage, <https://www.zumper.com/apartments-for-rent/19544319/2-bedroom-south-philadelphia-west-philadelphia-pa> (last accessed Oct. 2, 2019).¹ The next day, Ms. Anglin had the following exchange with an agent of Ginark:

Ms. Anglin: Good Afternoon, I’m inquiring about 2219 Winton. Is it still available? Can I schedule a viewing?

Ginark: Are you section 8?

Ms. Anglin: Yes 2 br [.]

Ginark: Not accepting any vouchers sorry [.]

Ms. Anglin: You did list on Gosection8.com, right?

Ginark: We’re not accepting Boucher’s [sic] I’m very sorry to inform.

See Ex. B, Anglin text messages.

¹ Ms. Anglin saw the advertisement for the Winton Street property on GoSection8.com, a different website. However, that listing has since been taken down. This text on this Zumper listing is identical to that on the GoSection8 listing which Ms. Anglin viewed.

Ginark's conduct violated the Fair Practices Ordinance. Since 1980, it has been against the law in Philadelphia for landlords to discriminate against tenants because of their source of income. The section regarding discrimination in the residential housing market is entitled "Unlawful Housing and Real Property Practices" and states in relevant part that:

It shall be an unlawful housing and real property practice to deny or interfere with the housing accommodation, commercial property or other real property opportunities of an individual or otherwise discriminate based on his or her race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, disability, marital status, age, *source of income*, familial status, or domestic or sexual violence victim status, including, but not limited to, the following...For the owner or any other person having the right to sell, rent, lease, or approve the sale, rental or lease of any housing accommodation, commercial property or other real property to refuse to sell, rent, or lease or otherwise discriminate in the terms, conditions, or privileges of the sale, rental, or lease of any housing accommodation, commercial property or other real property or in the furnishing of facilities or services in connection therewith.

Phila. Code § 9-1108(a)(1) (emphasis added). The Ordinance defines source of income as "any lawful source of income, and shall include, but not be limited to...all forms of public assistance, including Temporary Assistance for Needy Families; and *housing assistance programs*." *Id.* at § 9-1102(cc) (emphasis added). Here, Ginark's response is a textbook violation of the ordinance. Ms. Anglin was seeking to lease real property, but Ginark refused to rent to her because of her source of income, a housing choice voucher.

II. Combatting source of income discrimination necessary to ensure access to housing for low-income families, and courts throughout the country have broadly interpreted and applied source of income ordinances.

Stopping source of income discrimination is not only important to Ms. Anglin individually, it is necessary to effectuate the goals of the Section 8 program. The Department of Housing and Urban Development created and administered the housing choice voucher program to help "very low-income families, the elderly, and the disabled to afford decent, safe, and

sanitary housing on the private market.” Department of Housing and Urban Development, “Housing Choice Vouches Fact Sheet,” https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/about/fact_sheet (last accessed Sept. 30, 2019). However, in Philadelphia, two-thirds of landlords refuse to rent to housing choice voucher holders, even when the voucher in question will cover the rent. *See* Mary Cunningham, et al., A PILOT STUDY OF LANDLORD ACCEPTANCE OF HOUSING CHOICE VOUCHERS, URBAN INSTITUTE (Sept. 2018) <https://www.huduser.gov/portal/pilot-study-landlord-acceptance-hcv.html> (finding that 67% of landlord sin Philadelphia refuse to accept housing choice vouchers as a form of payment) (hereafter referred to as “Urban Institute Report”); *see also* Julia Terruso, “In Philly, two-thirds of landlords won’t take affordable housing vouchers – even when the renter can afford the place,” PHILA. INQ., (Aug. 27, 2018) <https://www.inquirer.com/philly/news/housing-vouchers-section-8-affordable-urban-institute-study-20180827.html>. This fact is especially alarming when compared to Washington D.C., which also prohibits source of income discrimination, but only 15% of landlords refuse to rent to voucher holders. *See* Urban Institute Report at p. 34.

This disparity exists despite Philadelphia having since 1980 a prohibition on source of income discrimination. *See* Phila. Code §§ 9-1102(cc) (defining source of income as including housing assistance programs); 9-1108(a)(1) (prohibiting discrimination on the basis of a tenant’s source of income in the rental market). Philadelphia is not alone in this endeavor – a dozen states and nearly one hundred municipalities ban source of income discrimination on the rental housing market. *See* “Expanding Choice: Practice Strategies for Building a Successful Housing Mobility Program, POVERTY & RACE RESEARCH ACTION COUNCIL, at Appendix B: State, Local, and Federal Laws Barring Source-of-Income Discrimination. Updated June 25, 2019. <https://prrac.org/pdf/AppendixB.pdf> (last accessed September 30, 2019).

Courts throughout the country have interpreted these provisions to prevent landlords from refusing to participate in the federal housing choice voucher program. *See, e.g., Keith Short & Fair Hous. Justice Ctr. v. Manhattan Apts., Inc.*, 916 F. Supp. 2d 375, 398 (S.D.N.Y. 2012) (“[L]andlords and agents cannot avoid liability for refusing to participate in government housing programs...” (quoting *Cales v. New Castle Hill Realty*, 10 CIV. 3426 DAB, 2011 U.S. Dist. LEXIS 9619, 2011 WL 335599, at *5 (S.D.N.Y. Jan. 31, 2011)); *Feemster v. BSA Ltd. P’ship*, 548 F.3d 1063, 1070 (D.C. Cir. 2008) (“[The landlord] has refused to accept Section 8 voucher payments from its tenants [and] it is a facial violation of the Human Rights Act to discriminate on the basis of the renter’s source of income.”); *Montgomery Cty. v. Glenmont Hills Assocs.*, 936 A.2d 325, 333 (Md. 2007) (“[W]e hold that ‘source of income’ does include vouchers issued under HCVP [housing choice voucher program]...[the landlord] clearly violated [the ordinance] by refusing to rent apartments to otherwise qualified tenants solely because they proposed to use Section 8 vouchers.”); *Godinez v. Sullivan-Lackey*, 815 N.E.2d 822, 826-27 (Ill. App. Ct. 2004) (finding a landlord violated Chicago’s source of income prohibition when it refused to rent to a housing choice voucher tenant). *Franklin Tower One v. N.M.*, 725 A.2d 1104, 1112 (N.J. 1999) (“We affirm the Appellate Division’s holding that a landlord’s refusal to accept a Section 8 voucher violates both the letter and the spirit of [the state source of income discrimination ban].”);

Moreover, courts have not been shy about the affirmative requirements such ordinances place on landlords. In *Commission on Human Rights & Opportunities v. Sullivan Associates*, the Connecticut Supreme Court stated that “[u]nlike the federal provisions governing section 8, [Connecticut law] which require[s] landlords to accept otherwise qualified tenants whose lawful source of income may include section 8 housing assistance, are mandatory.” 739 A.2d 238, 246 (Conn. 1999). The *Sullivan Associates* court in particular focused on the importance of source of

income protections as a matter of policy, writing that “it is a part of the public policy of this state that landlords may not discriminate against housing applicants because such applicants...look to section 8 assistance for payment of the stipulated rent.” *Id.* at 247.

The Commission should adopt a similar reading of the City’s Fair Practices Ordinance and vigorously enforce the prohibition on source of income. Doing so would give low-income families access to more housing choices on the private rental market and would effectuate the purpose of the Fair Practices Ordinance to “ensure that all persons...enjoy the full benefits of citizenship and are afforded equal opportunities for...housing...” Phila. Code § 9-1101(e).

III. Ginark’s defenses have no factual or legal basis.

In its answer, Ginark seems to lay out three distinct defenses, none of which hold up against the facts in this case or the underlying law. First, Ginark claims it never received any texts from Ms. Anglin, nor did it send any back to her. This assertion belies the evidence, as Ms. Anglin has provided true and correct copies of the text messages to and from the phone number in the 2219 Winston Street listings. *See* Ex. B, Anglin test messages. Additionally, if there were any doubt that this number belonged to Respondent, Ginark owner Gina Battaglini lists 267-753-6769 as the “Text” number in her email signature. *See* Ex. C, Battaglini email.

Ginark also asserts that 2219 Winton Street had already been leased out by the time Ms. Anglin inquired about the Property. However, this was not the reason it gave to Ms. Anglin when it texted her back. It asked her if she was a voucher holder, and then told her it was not taking vouchers. Even if the Property was leased at that time, it does not negate Ginark’s discriminatory conduct in refusing to engage with Ms. Anglin about possible housing opportunities because she was a voucher holder.

Ginark lastly states in its Answer that it has participated in the housing choice voucher program for over two decades. This may be true, but it is not a defense. A Maryland court

rejected this very argument in a source of income discrimination case, stating that it was “irrelevant that [the landlord] may have had no personal animus toward those prospective tenants, and it is irrelevant that it participated in other housing assistance programs.” *Montgomery Cty...*, 936 A.2d at 342. Compliance with the law in some instances and not others does not excuse instances of discrimination -- landlords cannot pick and choose when to follow the Fair Practices Ordinance.

In response to press inquiry, Ginark gave a different justification for not complying with Philadelphia’s ordinance:

Reached this week, Gina Battaglini, the general partner of Ginark, denied discriminating against tenants, but said she is in ‘business to make money’ and is “not going to take low-ball rents.’ She pointed the finger at the Philadelphia Housing Authority, which she said provides lower rents than she could get in the private market.

Caitlin McCabe, “Are landlords required to accept Section 8 vouchers? Philly lawyers think so, according to discrimination complaint.” PHILA. INQ. Aug. 15, 2019

(<https://www.inquirer.com/news/section-8-vouchers-affordable-housing-philly-tenants-landlords-public-interest-law-center-20190815.html>). This statement implied that Ginark did not want to accept vouchers because they provide lower rents than the private market. But, Ms. Anglin’s voucher would have covered the \$1,100 monthly rent Ginark was asking for the Winton Street property, thus undermining this defense.

Likewise, courts throughout the country have rejected such “business justification” or “administrative burden” defenses from landlords. In *Feemster, supra*, the Illinois Court of Appeals noted that the landlord’s “only rationale...suggested for its policy is that the voucher program’s requirements are burdensome.” 548 F.3d at 1070. That excuse, the court noted, “would render the Human Right Act’s definition of source of income nugatory.” *Id.* “Permitting [landlords] to refuse to accept Section 8 vouchers on the ground that it does not wish to comply

Section 8's requirements would vitiate [the] definition [of source of income] and the legal safeguard it was intended to provide." *Id.* at 1071.

Similarly, the court in *Keith Short* interpreted New York City's source of income discrimination law as foreclosing arguments regarding the bureaucratic delays or administrative burdens of voucher program: "[A]llowing realtors and landlords to discriminate against persons with government rental subsidies based on the administrative burdens associated with those subsidies would effectively nullify [New York City's] source-of-income provisions." *Keith Short*, 916 F. Supp. 2d at 398. The court expanded on this point, noting that New York's City Council "was clearly aware of the bureaucratic delays associated with...government rental subsidies when it passed the source of income law...[and] declined to carve out an exception" for those delays or burdens." *Id.* "This omission, in conjunction with the City Council's declaration that [New York City's statute] be construed liberally for the accomplishment of [its] uniquely broad and remedial purposes...clearly favors [our] interpretation." *Id.* (internal citations and quotations omitted). The Commission here too should reject such an administrative burden or business justification defense.

CONCLUSION

The Philadelphia Fair Practices Ordinance explicitly prohibits discrimination against tenants based on the source of income they use to pay rent. Ms. Anglin was the victim of this exact type of discrimination when Ginark refused to entertain her housing inquiry because she had a housing choice voucher. The Commission should award Ms. Anglin compensatory damages, punitive damages, attorneys' fees, and costs. Moreover, the Commission should craft injunctive relief to ensure that Ginark does not again discriminate in the future against a tenant's source of income as it did with Ms. Anglin.

Dated: October 3, 2019

/s/ George A. Donnelly
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