

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX**

-----X

JESENIA APONTE,

Plaintiff,

v.

**DEKALB ASSOCIATES LLC, JEFFERY GAULT,
PERRY GAULT, and PERRY GAULT
MANAGEMENT,**

Defendants.

-----X

Case No. 309444 - 09

COMPLAINT

Plaintiff Jesenia Aponte, by her attorneys, Giskan Solotaroff Anderson & Stewart LLP, for her complaint against the Defendants, DeKalb Associates LLC, Jeffery Gault, Perry Gault, and Perry Gault Management, alleges as follows:

09 NOV 19 PM 1:58
COUNTY CLERK
BRONX COUNTY
RECEIVED

PRELIMINARY STATEMENT

1. Plaintiff Jesenia Aponte is a 38 year old low-income woman who waited more than a decade for a Section 8 rental voucher. She was awarded the voucher in 2009, but Defendants, her landlords, refused to accept it. Defendants' refusal to accept the Section 8 voucher constitutes discrimination in violation of New York City Human Rights Law, Section 8-107(5) of the Administrative Code of the City of New York. Due to Defendants' refusal, her voucher expired in August of 2009, and she lost that source of rental payment. The waiting list for applications for vouchers is currently closed, and when and if new applications are accepted Plaintiff may wait another decade or more to receive a new voucher.

2. Plaintiff seeks compensatory damages including compensation for the loss of the voucher which would have paid her future rent each month. Defendants' conduct was willful, intentional, and in reckless disregard of her civil rights. Plaintiff also seeks punitive damages,

attorneys' fees and costs, and an injunction ordering Defendants to (1) accept any Section 8 voucher obtained by Plaintiff in the future as payment for rent; and (2) refrain from eviction of Plaintiff.

JURISDICTION

3. This court has jurisdiction pursuant to New York C.P.L.R. §§ 301 & 3001.

VENUE

4. Venue is proper in this county pursuant to New York C.P.L.R. § 503 because Plaintiff resides in this county at 3433 DeKalb Avenue, Apartment 4C, Bronx, New York 10467.

PARTIES

5. Plaintiff Jesenia Aponte resides at 3433 DeKalb Avenue, Apartment 4C, Bronx, New York 10467.

6. Defendant DeKalb Associates LLC (referred to herein as "DeKalb LLC"), is the owner of the premises located at 3433 DeKalb Avenue, Apartment 4C, Bronx, New York 10467, and maintains a principal place of business at 455 Central Park Avenue, Suite 205, Scarsdale, New York 10583.

7. Defendant Jeffery Gault is the owner of the building at 3433 DeKalb Avenue, and an Officer and Owner of DeKalb LLC and maintains a place of business at 455 Central Park Avenue, Suite 205, Scarsdale, New York 10583.

8. Defendant Perry Gault is an Officer and Owner of DeKalb LLC, and maintains a place of business at 455 Central Park Avenue, Suite 205, Scarsdale, New York 10583.

9. Defendant Perry Gault Management is the Managing Agent of DeKalb LLC, and maintains a place of business at 3433 DeKalb Avenue, Bronx, New York 10467.

10. Defendants DeKalb, Jeffery Gault, Perry Gault, and Perry Gault Management are collectively referred to as “Defendants.”

**STATUTORY AND REGULATORY FRAMEWORK
SECTION 8 VOUCHER PROGRAM**

11. The Housing Act of 1937, 42 U.S.C. § 1437 *et seq.*, authorized a nationwide program commonly known as the Section 8 Voucher Program (“Section 8”), “[f]or the purpose of aiding low-income families in obtaining a decent place to live.” 42 U.S.C. § 1437f(a). Participation is restricted to individuals and families that are determined to be of lower income. *Id.* § 1437f(o)(4). The program provides rent subsidies to such lower-income individuals and families to enable them to obtain safe and decent housing.

12. The Department of Housing and Urban Development (“HUD”) contracts with local housing authorities to operate the program. *Id.* § 1437f(b)(1). In New York City, the New York City Housing Authority (“NYCHA”) is one of the two local authorities that operate a Section 8 voucher program. NYCHA was created pursuant to Public Housing Law § 401 of the State of New York.

13. Once a tenant identifies an apartment whose rent is within the fair market rent level established by HUD, the owner of that apartment enters into a Housing Assistance Payment (“HAP”) contract with NYCHA. *See generally*, 24 C.F.R. §§ 982.1(a)(2), 982.515. NYCHA pays the landlord a portion of the monthly rent directly.

**PROHIBITION OF DISCRIMINATION AGAINST
LAWFUL SOURCES OF INCOME**

14. New York City Local Law 10, which amended the New York City Human Rights

Law, Section 8-101 *et seq.*, of the Administrative Code of the City of New York, prohibits discrimination by landlords against tenants based on their lawful source of income, which includes income derived from housing assistance vouchers.

15. Under Local Law 10, it is an unlawful discriminatory practice “[t]o refuse to . . . rent, lease, approve the . . . rental or lease or otherwise 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. . . lawful source of income of such person or persons.*” N.Y.C. Admin Code § 8-107(5)(a)(1)(emphasis added).

16. Under Local Law 10, it is unlawful to discriminate “against any person . . . because of any lawful source of income of such person . . . in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith.” *Id.* § 8-107(5)(a)(2).

17. Section 8-102(25) of Local Law 10 unambiguously defines “lawful source of income” as “income derived from . . . any form of federal, state or local public assistance or housing assistance including section 8 vouchers.” *Id.* § 8-102(25).

18. Section 8 vouchers are a form of federal housing assistance constituting a “lawful source of income” under the Administrative Code.

19. Under Local Law 10, the prohibition on discrimination applies to apartments located in buildings that contain at least six units. *Id.* § 8-107(5)(0).

FACTS

20. Plaintiff Jesenia Aponte lives at 3433 DeKalb Avenue, Apartment 4C, Bronx, New York 10467 [the “apartment building”]. She has lived there for approximately 19 years pursuant to a rent-stabilized lease.

21. The apartment building is owned and managed by Defendants. It is a six-story building with approximately 82 units.

22. Plaintiff initially applied for a Section 8 voucher in the early to mid 1990s, and was finally approved on January 23, 2009. Her current rent is \$566.33 per month.

23. When she learned of the Section 8 voucher approval, plaintiff was initially discouraged by employees of defendants from approaching defendants to request acceptance of the voucher. She was informed that it was not defendants' practice to accept the vouchers anymore.

24. In March of 2009, plaintiff approached defendants and informed them of her Section 8 voucher. She spoke directly to defendant Jeffery Gault, and he refused to accept the voucher.

25. Plaintiff made multiple requests, and defendant Jeffery Gault informed plaintiff on multiple occasions that he refused to accept her voucher.

26. Defendant Jeffery Gault stated, in substance, that he would rather lose thousands of dollars than accept another Section 8 voucher in his building.

27. Plaintiff informed defendants that they must enter into an agreement to accept the Section 8 voucher before it was set to expire on July 23, 2009. Nevertheless, defendants refused to accept the voucher.

28. On or about July 10, 2009, plaintiff obtained a verbal extension of the viability of the Section 8 voucher, until on or about August 10, 2009.

29. Plaintiff sought the assistance of HELP Homebase II, a non-profit organization that prevents homelessness. HELP Homebase II secured a one-time payment of plaintiff's rent

arrears from a non-profit funding source, to bring plaintiff current on her rent. Plaintiff advised HELP Homebase II of the defendants' refusal to accept the voucher.

30. On July 22, 2009 Marlene Rodriguez, a Supervisor at HELP Homebase II, contacted defendant Jeffery Gault on plaintiff's behalf by telephone. She advised defendant Jeffery Gault that he must accept the Section 8 voucher, and sign the HAP contract with NYCHA.

31. Defendant Jeffery Gault rebuffed Marlene Rodriguez and informed her that defendants would not accept the voucher, and that he had decided he no longer wished to accept Section 8 vouchers in his building.

32. The Section 8 verbal extension of the voucher expired on or about August 10, 2009. Plaintiff has attempted to obtain a new voucher, but was advised that no one is eligible to enter the waiting list for a new Section 8 voucher because the waiting list is now so long that it has been closed.

32. Upon information and belief, defendants' actions towards plaintiff complained of herein are part of an intentional course of conduct whereby defendants are pushing low-income and indigent families out of their rent-stabilized apartments at 3433 DeKalb Avenue -- in Ms. Aponte's case -- by refusing to accept her Section 8 voucher.

33. Defendants' repeated refusals to accept plaintiff's Section 8 voucher, have put her in fear of losing the apartment, have caused her to lose the value of the Section 8 voucher, and have caused her emotional and physical distress.

CAUSE OF ACTION

34. Plaintiff incorporates Paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. Defendants' refusal to accept plaintiff's Section 8 voucher subsidy as payment for rent violates Sections 8-107(5)(a)(1) and 8-107(5)(a)(2) of the Administrative Code of the City of New York, which prohibit landlords from discriminating against tenants who present lawful sources of income as the means to pay rent.

35. Defendants' conduct has been willful, intentional and in reckless disregard of Plaintiff's civil rights.

36. As a direct and proximate result of defendants' unlawful conduct, plaintiff sustained the damages alleged herein.

37. Accordingly, plaintiff is entitled to a declaratory judgment, injunctive relief, compensatory damages, punitive damages, and reasonable attorneys' fees and costs.

38. Plaintiff has served a copy of this complaint upon representatives authorized by the New York City Commission on Human Rights and the Corporation Counsel to receive copies of complaints in actions commenced pursuant to the New York City Human Rights Law.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

- a) That the Court declare that defendants have violated Section 8-107(5) of the Administrative Code of the City of New York by discriminating against plaintiff based on her lawful source of income and refusing to accept and process her Section 8 voucher;
- b) That the Court award plaintiff compensatory damages, in an amount to be determined by the jury;
- c) That the Court award plaintiff punitive damages, in an amount to be determined by the jury;

- d) That the Court award plaintiff pre-judgment interest pursuant to C.P.L.R. sections 5001 and 5004.
- e) That the Court order defendants not to evict plaintiff from her apartment at 3433 DeKalb Avenue, Apartment 4C, Bronx, New York 10467;
- f) That the Court order defendants to accept plaintiff's future Section 8 voucher whenever it may arrive;
- g) That the Court order defendants, upon receipt of plaintiff's Section 8 rent voucher, to enter into a HAP contract, and to execute all other necessary related documents;
- h) That the Court award plaintiff reasonable attorneys' fees and costs; and
- i) That the Court awards such other and further relief as this Court deems just and proper.

Dated: November 19, 2009
New York, New York

GISKAN SOLOTAROFF ANDERSON
& STEWART LLP

By:



Robert L. Herbst
Amanda Masters
11 Broadway, Suite 2150
New York, NY 10004
Phone: (212) 847-8315
Fax: (646) 638-7857

VERIFICATION

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

JESENIA APONTE, being duly sworn, deposes and says:

1. I am the plaintiff in this action.
2. I have read the contents of the foregoing complaint.
3. The information stated therein is true to my own knowledge except as to those matters stated to be alleged upon information and belief, and as to those matters I believe the information to be true.

Jesenia Aponte
Jesenia Aponte

Sworn to before me this

19th day of November, 2009

Catherine E. Anderson

NOTARY PUBLIC

CATHERINE E. ANDERSON
Notary Public, State of New York
No. 02AN5079715
Qualified in New York County
Commission Expires 06/09/ 11