

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOC #:
DATE FILED: 3/9/11

FAIR HOUSING JUSTICE CENTER, Inc.,
JUSTIN CARTER, KAARON MINEFEE,
MICHAEL JAMES, and ADRIENNE WILLIAMS,

Plaintiffs,

10 Civ. 34 (CM)

-against-

BROADWAY CRESCENT REALTY, Inc.,
M & N MANAGEMENT CORP., LOUIE DODAJ,
and PRANVERA CELAJ,

Defendants.

x

**DECISION AND ORDER GRANTING IN PART AND DENYING IN PART
DEFENDANT PRANVERA CELAJ'S MOTION FOR SUMMARY JUDGMENT**

McMahon, J.:

BACKGROUND

Plaintiffs Fair Housing Justice Center, Inc., Justin Carter, Kaaron Minefee, Michael James, and Adrienne Williams (the "Plaintiffs") brought an action against Defendants Broadway Crescent Realty, Inc., M & N Management Corp., Louie Dodaj, and Pranvera Celaj (the "Defendants") seeking damages and injunctive relief. Plaintiffs allege the Defendants engaged in discriminatory housing practices on the basis of race in violation of the Fair Housing Act ("FHA"), 42 U.S.C. § 3601 et. seq., the New York State Human Rights Law ("NYSHRL"), N.Y. Exec. Law §290 et. seq., and the New York City Human Rights Laws (NYCHRL"), N.Y. Admin. Code §8-107 et. seq.

Defendant Celaj brings this motion for summary judgment to dismiss all claims against her on the basis that she cannot be held personally liable under the FHA, NYSHRL, or NYCHRL. Defendant Celaj also argues that summary judgment is appropriate because no material fact in dispute suggests that she intentionally discriminated against the Plaintiffs because of their race.

For the reasons that follow, Defendant Celaj's motion for summary judgment is granted in part and denied in part.

FACTS

The undisputed facts relevant to this motion are taken from the parties' Rule 56.1 statements, declarations and exhibits. As the evidence must be viewed in favor of the non-moving party on a motion for summary judgment, where discrepancies exist in the transcripts of the audio recordings, the Plaintiff's version has been adopted.

This case concerns whether illegal housing discrimination took place at the Broadway Crescent Apartments (the "Apartments") in Astoria, Queens. The Apartments are owned by Broadway Crescent Realty, Inc. ("Broadway") and managed by M & N Management Corp. ("M & N"). Louis Dodaj is the Superintendent of the Apartments. His wife, Defendant Celaj, lives in the Apartments with her husband and family; she is not employed by either Broadway or M & N. (Def. Celaj's Mem. of Law 1-2; Def. Celaj's Rule 56.1 Stmt. ¶ A.1.; Pls.' Rule 56.1 Counterstmt. ¶ 1.)

Plaintiff Fair Housing Justice Center ("FHJC") is a non-profit organization based in New York City whose mission is to ensure all people have equal access to housing. In August and September 2009, FHJC conducted tests to determine whether illegal housing discrimination was taking place at the Apartments (the "Apartments"). (Freiberg Decl. ¶ 7, 9.) Testers received

training on how to conduct a test, prepare a test report reflecting information obtained during the test, and use of a concealed digital audio recording device to record conversations during the test. (Freiberg Decl. ¶ 8.) The first and third tests are relevant for considering Defendant Celaj's motion for Summary Judgment.

FHJC conducted the first test on August 17 and 18, 2009. The test included two white testers, Gloria Parker and Todd Phillips, and one African American tester, Plaintiff Justin Carter; all three met with Defendant Celaj at the Superintendent's apartment unit. (Freiberg Decl. ¶¶ 10-12; Exs. A-C.)

Gloria Parker met Defendant Celaj around 2:00 p.m. on August 17, 2009. She asked whether any one or two bedroom apartments would be available for rental in September. Defendant Celaj told Parker that an apartment may be available.

Gloria Parker: I'm looking for an apartment, one or two bedrooms, available in September, anything in the building possibly?

Pranvera Celaj: I think one...I dunno which month, maybe September, I don't know.

Gloria Parker: Yeah, I need to move.

* * *

Pranvera Celaj: Well, I don't know whether somebody take it yet. I have an application, I'm not sure. Louis, my husband, is not here now.

Gloria Parker: Oh, okay.

Pranvera Celaj: He's in the building, but I don't know who...
(Freiberg Decl. Ex. A; Stofsky Affirmation Ex. I.)

Parker then inquired whether a broker was required to rent an apartment and if there was a waiting list for applicants.

Gloria Parker: Do I need to work with a broker to get an apartment? . . .

Pranvera Celaj: No, no. Sometimes, you know, the people bring the information and I take it. . . .

Gloria Parker: Okay, . . . is there a waiting list? Or can I take an application form with me? And is there someone I could telephone?

Pranvera Celaj: Okay, I call my husband, I don't know where's answer. I'll tell him you are here.

* * *

Pranvera Celaj: Wait in the lobby, you know, remember?

Gloria Parker: In the lobby downstairs? What is your husband's name?

Pranvera Celaj: Louie.

Gloria Parker: Louie. Thank you.

(Freiberg Decl. Ex. A; Stofsky Affirmation Ex. I.)

Parker met Defendant Dodaj in the lobby, who told her an apartment would be available at the end of August, but that the unit needed work. He quoted her \$1800-1850 per month, utilities included. (Frieberg Decl. Ex. I.)

The next day, Plaintiff Justin Carter went to the Apartments around 1:30 p.m. to inquire if any units were available for rental. He spoke with Defendant Celaj.

Justin Carter: Hi, um, do you have any apartments available?

Pranvera Celaj: No.

Justin Carter: Nothing available?

Pranvera Celaj: No, nothing's empty now.

Justin Carter: Um, do you know when anything is gonna be coming up?

Pranvera Celaj: No, I don't know.

Justin Carter: No?

Pranvera Celaj: For now, everything is gone.

Justin Carter: Everything is taken? Okay. Do you guys, uh, do you have a waiting list?

* * *

Justin Carter: . . . Oh, no? . . . Okay. Um, and what time is your husband usually in?

Pranvera Celaj: I know he's working out on the building.

Justin Carter: Oh, oh, he's around, he's here?

Pranvera Celaj: He's working, but I'm am sure nothing is empty for now.

Justin Carter: Okay, nothing is empty. Okay. Thank you very much.

(Freiberg Declaration Ex. C; Stofsky Affirmation Ex. J.)

Plaintiff Carter's report to the FHJC is not included in the record. Therefore, it is not known whether he attempted to locate or spoke with Defendant Dodaj.

Approximately one hour later, Todd Phillips went to the Apartments to see if any units were available. Phillips met with Defendant Celaj; a similar conversation ensued.

Todd Phillips: I was wondering if, uh, the super is around, I am looking for an apartment.

Pranvera Celaj: No, no have an apartment.

Todd Phillips: Is the super around? Are you the super?

Pranvera Celaj: Yeah, my husband is, yeah.

Todd Phillips: Is he home or is he not home right now?

Pranvera Celaj: No he's at work in the building.

Todd Phillips: Okay, could I – even if you don't have anything available now, could I say hello to him?

Pranvera Celaj: Okay, I call him and wait in the lobby.
(Freiberg Decl. Ex. C; Stofsky Affirmation Ex. K.)

Phillips met with Defendant Dodaj, who informed him that a one bedroom unit would become available in September. Monthly rental was \$1850, utilities included. (Freiberg Decl. Ex. J.)

FHJC continued testing at the Apartments throughout August; however, no other testers met with Defendant Celaj until September 9, 2009. At 10:30 a.m. on that date, Plaintiff Michael James, an African American tester in the third testing group, met with Defendant Celaj. He inquired into whether any one bedroom apartments were available.

Michael James: Hi, is the super in?

Pranvera Celaj: No.

Michael James: Okay, is there anyone around, because I would like to look at one bedroom apartments.

Pranvera Celaj: I don't know who is... I don't know.

Michael James: You have no... are you his wife? Are you...

Pranvera Celaj: Yes, I'm ... I know he's in the building...

Michael James: He... he is in the building though?

Pranvera Celaj: Yeah, working apartment.

Michael James: Okay. There is no way you can like call him or reach him? He doesn't have... There isn't any way you can call him and reach his cell phone or anything...

Pranvera Celaj: I don't know where he is... Go... go up in the basement and

Michael James: The basement? What's his name?

Pranvera Celaj: Louie.

Michael James: Louie, oh.

(Freiberg Decl. Ex. D; Stofsky Affirmation Ex. L.)

Plaintiff James met with Defendant Dodaj, who told him that the last unit was rented the day before by a man who had been waiting three months for an apartment. (Freiberg Decl. Ex. N.)

DISCUSSION

Defendant Celaj moves for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. A party is entitled to summary judgment when there is “no genuine issue as to any material fact,” and the undisputed facts warrant judgment for the moving party as a matter of law. Fed. R. Civ. P. 56(c); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986).

On a motion for summary judgment, the court must view the record in the light most favorable to the nonmoving party and draw all reasonable inferences in its favor. Anderson, 477 U.S. at 255; Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

The moving party has the initial burden of demonstrating the absence of a disputed issue of material fact. Celotex v. Catrett, 477 U.S. 317, 323 (1986). Once such a showing has been made, the nonmoving party must present “specific facts showing a genuine issue for trial.” Fed. R. Civ. P. 56(e). The non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (citations omitted). Sufficient evidence must exist upon which a reasonable jury could return a verdict for the nonmoving party. Not every disputed factual issue is material in light of the substantive law that governs the case. “Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude summary judgment.” Anderson, 477 U.S. at 248. Summary judgment is warranted when the non-movant has no evidentiary support for an essential element on which it bears the burden of proof. Celotex, 477 U.S. at 322-23; Silver v. City Univ. of N.Y., 947 F. 2d 1021, 1022 (2d Cir. 1991).

I. Fair Housing Act

Defendant Celaj contends that she is entitled to summary judgment as a matter of law, arguing that she may not be named as a defendant under the Fair Housing Act, since she is not an employee or agent of the housing complex.

Few courts have decided addressed the issue of whether a particular defendant may be sued under the FHA. See Housing Discrimination Law and Litigation § 12B:1. Unlike similar statutes that expressly limit liability to a few actors (e.g. NYSHRL and NYCHRL, discussed *infra*), the FHA is silent on who can and cannot be sued. Rather, the FHA “focuses on prohibited acts,” Meyer v. Holley, 537 U.S. 280, 285 (2003), and simply declares that such acts “shall be unlawful.” 42 U.S.C. § 3604.

The purpose of the FHA is to “provide. . . for fair housing throughout the United States.” 42 U.S.C. § 3601. In Trafficante v. Metropolitan Life Ins. Co., the Supreme Court noted that the language of the FHA is “broad and inclusive” and carries out a “policy that Congress considered to be of the highest priority.” 409 U.S. 205, 209, 211, 211 (1972). This “generous construction” was reaffirmed in Havens Realty Corp. v. Coleman, 455 U.S. 363, 380 (1982), and City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995).

Since Trafficante, courts have held that (1) owners, Mayer, 537 U.S. 280; (2) their agents, Marya v. Slakey, 109 F. Supp. 2d 95 (D.Mass. Nov. 20, 2001); (3) condominium board members, Schroeder v. De Bertolo, 879 F. Supp. 173 (D. PR March 23, 1995); (4) neighbors, Ohana v. 180 Prospect Place Realty Corp., 996 F. Supp. 238 (E.D.N.Y. March 11, 1998); (5) municipalities, Keith v. Volpe, 858 F.2d 467 (9th Cir. 1988); (6) public officials, Meadowbriar Home for Children, Inc. v. Gunn, 81 F.3d 521 (5th Cir. 1996); (7) housing vendors, United States v. Space Hunters, 429 F.3d 416 (2d Cir. 2005); (8) and even arsonists, Antonio v. Security

Services of America, LLC, 701 F. Supp. 2d 749, 783 (Md. SD March 31, 2010); could be liable under the FHA. This court adopts the position that *anyone* who commits an act set forth in the statute is liable.

Accordingly, whether Defendant Celaj was an employee of Defendants Broadway and/or M & N, or was their agent with actual or apparent authority, is not dispositive of whether she may be personally liable under the statute. The relevant inquiry is whether she committed an act prohibited by the statute. If Defendant is found to have committed the acts set forth in sections 3604(b) or (d) of the statute, then she can be held personally liable to Plaintiffs.

1. Section 3604(d)

Under the Fair Housing Act, it is unlawful to “represent to any person because of race. . . that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.” 42 U.S.C. § 3604(d).

Claims of housing discrimination are evaluated under the McDonnell Douglas burden-shifting framework. Mitchell v. Shane, 350 F.3d 39, 47 (2d Cir. 2003). First, the Plaintiff must establish a prima facie case of discrimination by a preponderance of the evidence. Id. (citing McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973)); Texas Dept. of Cmty. Affairs v. Burdine, 450 U.S. 248, 248 (1981). The burden then shifts to defendant to proffer a legitimate, nondiscriminatory reason for his or her action. Id. Once a defendant makes this showing, the burden shifts back to the plaintiff to demonstrate the proffered justification is a pretext and that discrimination is the real underlying motive. Id. District courts must carefully scrutinize a defendant’s proffered rationale, especially if it is subjective in nature, as defendant’s often try to conceal their discriminatory intent. Robinson, 610 F.2d at 1040. To defeat summary

judgment, the plaintiff must show a reasonable jury could find that the defendant's actions were motivated by discrimination. Mitchell, 350 F.3d at 47.

To make a prima facie case of racial discrimination under the FHA, plaintiffs are only required to demonstrate that the actions had a discriminatory effect; a showing of discriminatory intent is not required. Robinson v. 12 Lofts Realty, Inc., 610 F.2d 1032, 1036 (2d Cir. 1979); Williamsburg Fair Hous. Comm. v. New York City Hous. Auth., 493 F. Supp. 1225, 1245 (S.D.N.Y. 1980). The elements of plaintiff's prima facie case under section 3604(d) are not clearly outlined in either statute or case law. Courts that have addressed the issue have adopted as sufficient a showing that (1) plaintiffs are members of a protected class; (2) plaintiffs requested information on the availability of a particular type of apartment; (3) defendants failed or refused to provide truthful information as to the availability of such apartments; and (4) white applicants were provided with truthful information. Open House Center, Inc. v. Kessler Realty, Inc., 96-CV-6234 (ILG), 2001 WL 1328446 (E.D.N.Y. Sept. 18, 2001); Darby v. Heather Ridge, 806 F. Supp. 170, 176 (E.D. Mich. 1992); see Ramos v. U.S. Dep't of Housing & Urban Development, 96-CV-5552 (MGC), 1999 WL 1129065 (S.D.N.Y. Dec. 8, 1999); United States v. Town Hall Terrace Ass'n, 95-CV-0533E (H), 1997 WL 128353 (W.D.N.Y. Mar. 14, 1997).

Plaintiffs have failed to sustain their burden of presenting a prima facie case of discrimination against Defendant Celaj, because they have not shown that she provided the African American testers with any different information than she gave the white testers.

The first two prongs have undoubtedly been met. Plaintiffs Carter and James are African American, and therefore qualify as a protected class under the statute. Plaintiff Carter also asked

whether an apartment was available for rent.¹ (Freiberg Decl. ¶ 10, 15; Ex. B; Stofsky Affirmation Ex. J.) Plaintiffs have also met the third prong of the test. On August 18, 2009, Defendant Celaj told Plaintiff Carter no apartments were available. (Freiberg Declaration Ex. B; Stofsky Affirmation Ex. J.) The evidence shows that a one bedroom apartment would be available September 1, 2009. (Freiberg Declaration Ex. J.)

However, Plaintiffs have not met the fourth prong of the test. No reasonable jury could find that Defendant Celaj provided the white testers with any different information than the African American testers. In fact, the record suggests that on August 18, 2009, Defendant Celaj told an African American tester, Plaintiff Carter, and a white tester, Phillips, the same thing – that no apartments were available. (Freiberg Declaration Exs. B, C.) The day before, Defendant Celaj indicated to Parker, the other white tester, that she did not know whether apartments were available in the building. While Defendant Celaj first told Parker an apartment *may* be available, she quickly corrected herself and said that she did not know whether that apartment had been taken.

Plaintiffs have not met their burden of making out a prima facie case. Therefore, Plaintiffs' claim against Defendant Celaj pursuant to 42 U.S.C. § 3604(b) is dismissed.

2. Section 3604(b)

Pursuant to section 3604(b) of the Fair Housing Act, one may not “discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling. . . because of race. . . .” 42 U.S.C. § 3604(b). To make out a prima facie case, plaintiffs “must make a modest showing” that they were offered different or less favorable terms than white applicants. Khalil v.

¹ It should be noted that Plaintiff James never asked Defendant Celaj whether an apartment was available. Therefore, whether Defendant Celaj misrepresented the availability of an apartment can only be determined as to Plaintiff Carter.

Farash Corp., 452 F. Supp. 2d 203, 208 (W.D.N.Y.), aff'd. 277 F. App'x. 81 (2d Cir. 2008) (quoting United States v. Town Hall Terrace Ass'n, No. 95-CV-0533, 1997 WL 128353, *4 (W.D.N.Y. Mar. 14, 1997); see also, United States v. Balistreri, 981 F.2d 916, 929 (7th Cir. 1992). Violations of section 3604(b) are recognized where such differences include showing a member of a protected class fewer apartments, quoting higher rents, quoting later days of availability, requiring applications and credit checks, or representing apartment features differently (e.g., "a one bedroom for the white tester; black tester told unit is really small"). Balistreri, 981 F.2d at 929; Harris v. Itzhaki, 183 F.3d 1043, 1053 (9th Cir. 1999).

In this case, Plaintiffs Carter and James were told that no apartments were available; therefore, none of the "terms, conditions, or privileges" listed above apply. However, plaintiffs argue that Defendant Celaj violated section 3604(b) by acting as a gatekeeper, encouraging white testers by providing them with easy access to the Superintendent and hindering African American testers by requiring them to locate the Superintendent without any help.

This claim is most analogous to racial steering, the practice of encouraging patterns of racial segregation by steering members of a protected class away from building and neighborhoods inhabited by members of other races or groups. See Haven Realty Corp. v. Coleman, 455 U.S. 363, 384 n.1 (1982). The Second Circuit recognizes racial steering as a violation of section 3604(b) of the Fair Housing Act, United Space v. Space Hunters, Inc., 429 F.3d 416, 421 (2d Cir. 2005); see Cabrera v. Jakobovitz, 24 F.3d 372 (2d Cir. 1994); Wheatley Heights Neighborhood Coal. v. Jenna Resales Co., 429 F. Supp. 486, 488 (E.D.N.Y. 1977), but has not specifically addressed its reach in situations where an individual in a building is alleged to act as a "gatekeeper."

However, the Second Circuit has noted that the Fair Housing Act should be given “broad and liberal construction” to further Congress’ intent “of replacing racially segregated housing with ‘truly integrated and balance living patterns.’” Cabrera v. Jakobovitz, 24 F.3d at 388 (citing Woods-Drake v. Lundy, 667 F.2d 1198, 1201 (5th Cir.1982) (quoting Trafficante v. Metropolitan Life Insurance Co., 409 U.S. at 211)). Applying a broad reading, the Seventh and the Ninth Circuit recognize tactics of delay, hindrance, and special treatment to white testers as actionable conduct under section 3604(b). Harris, 183 F.3d at 1053-54; United States v. Balistreri, 981 F.2d 916, 929 (7th Cir. 1992); Village of Bellwood v. Dwivedi, 895 F.2d 1521 (7th Cir. 1990) (noting “any effort to discourage will do”).

Applying this standard, a genuine issue of fact exists as to whether Defendant Celaj intentionally encouraged white testers and hindered the efforts of the African American testers to inquire about the availability of apartments. A reasonable juror could find Defendant Celaj’s refusal to call the Superintendent for the African American testers, even when specifically asked to be an intentional act meant to discourage them from inquiring further as to the availability of apartments.

In each of the conversations with the white testers, Defendant Celaj called the Superintendent and arranged for a meeting in the lobby of the building. (Freiberg Decl. Exs. A, C; Stofsky Affirmation Exs. I, K.) When Parker and Phillips asked if there was anyone they could speak with about the availability of apartment, even though no units were currently available, Defendant Celaj immediately acquiesced and called her husband (“Okay, I call my husband.” “Okay, I call him.”). (Id.) However, when Plaintiffs Carter and James asked a similar question, Defendant Celaj did not offer to call her husband, replying only that he was working in the building. (Freiberg Decl. Exs. B, D; Stofsky Affirmation Ex. J, L.) Even when Plaintiff

James specifically asked if there was any way to call or reach the Superintendent on his cell phone, Defendant Celaj did not offer to call her husband, telling James “I don’t know where he is... Go... go up in the basement.” (Freiberg Decl. Ex. D, Stofsky Affirmation Ex. L.)

In addition to Defendant Celaj’s failure to call her husband when prompted by the African American testers, the overall tenor of the conversations could lead a reasonable juror to find that Defendant Celaj was intentionally trying to hinder the African American testers from inquiring further about apartment availability, because of their race. When conversing with Plaintiffs Carter and James, Defendant Celaj volunteered little information in comparison to when conversing with Parker and Phillips. Much of Defendant Celaj’s conversation with Plaintiff Carter begins with the word “no” (“No.”; “No, nothing’s empty now.”; “No, I don’t know.”). Even sentences that did not begin with “no” conveyed negative information (“For now, everything is gone.”; He’s working, but I am sure nothing is empty for now.”). (Freiberg Decl. Ex. B; Stofsky Affirmation Ex. J.)

In contrast, Defendant Celaj volunteered helpful information to Parker (“I have an application.” “You have... any telephone number or anything....?” “Sometimes, you know, the people bring the information and I take it....” “Okay, I call my husband.” “Wait in the lobby....”). (Freiberg Decl. Ex. A; Stofsky Affirmation Ex. I.) Further, Defendant Celaj did not qualify her statements when speaking with Parker and Phillips (“[H]e’s at work in the building.” Not, “He’s working, but I am sure nothing is empty for now.”). (Frieberg Decl. Exs. A, B; Stofsky Affirmation Exs. I, J.)

These discrepancies in treatment could lead a reasonable juror to conclude that Defendant Celaj intentionally hindered and discouraged black applicants from applying for available units.

Therefore, Defendant Celaj's motion for summary judgment on the Plaintiffs' section 3604(b) claim is denied.

II. New York State and City Human Rights Laws

Defendant Celaj argues that she cannot be sued under the NYSHRL and NYCHRL, since she is not an agent or employee of either Broadway or M & N. N.Y. Exec. Law § 296(5); N.Y. City Admin. Code § 8-107(5).

NYSHRL section 296(5) makes the following types of persons liable: "the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof." N.Y. Exec. Law § 296(5)(a). Section 8-107(5)(a) of the NYCHRL contains substantially the same language, so courts apply the same standard when analyzing claims under these two provisions. Dunson v. Tri-Maint. & Contractors, Inc., 171 F. Supp. 2d 103, 113-14 (E.D.N.Y. 2001); *see* Mohamed v. Marriott Int'l, Inc., 905 F.Supp. 141, 157 (S.D.N.Y.1995).

Plaintiffs admit in their Rule 56.1 Counterstatement that Defendant Celaj was not employed by any of the co-Defendants. (Def. Celaj's Rule 56.1 Stmt. ¶ A.1.; Pls.' Rule 56.1 Counterstmt. ¶ 1.) So, Defendant Celaj did not have any actual authority.

Furthermore, Plaintiffs have not offered any evidence that tends to show that Defendant Celaj had apparent authority to act on behalf of Broadway or M & N. When opposing summary judgment, plaintiffs cannot rest on allegations alone; they must produce evidence tending to show there is a genuine issue of material fact. Apparent authority requires Plaintiffs to show that the African American testers relied on Defendant Celaj, because of some misleading conduct on the part of the *principal*. Hallock v. State of New York, 64 N.Y.2d 224 (1984). Plaintiffs have not offered any evidence of conduct suggesting that either Broadway or M & N did anything to

confer apparent authority to the wife of the Superintendent. The record shows each Plaintiff understood that Defendant Celaj was not the Superintendent, but his wife. (Freiberg Decl. Exs. A-D; Stofsky Affirmation Exs. I-L.) While Plaintiffs Carter and James may have assumed that Defendant Celaj had special information concerning the availability of apartments as a result of her personal connection to the building Superintendent, the relationship between Defendant Dodaj and Defendant Celaj cannot confer apparent authority. Therefore, Plaintiffs claims against Defendant Celaj pursuant to sections 296(5) and 8-107(5) of the NYSHRL and NYCHRL, respectively, are dismissed.

However, Defendant Celaj can be sued under the NYSHRL and NYCHRL for aiding and abetting discriminating housing practices. N.Y. Exec. Law § 296(6); N.Y. City Admin. Code § 8-107(6). Sections 296(6) and 8-107(6) of the NYSHRL and NYCHRL, respectively, specify that “It shall be an unlawful discriminatory practice for *any person* to aid [or] abet. . . the doing of any of the acts forbidden under this chapter, or to attempt to do so.” *Id.* These provisions provide a “broad[] source of personal liability.” *Perks v. Town of Huntington*, 251 F. Supp. 2d 1143, 1160 (E.D.N.Y. 2003). The Second Circuit held that the aiding and abetting provision imposes individual liability “on a defendant who *actually participates* in the conduct giving rise to a discrimination claim.” *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1317 (2d Cir. 1995) (emphasis added).

Claims of housing discrimination under the NYSHRL and NYCHRL are analyzed under the same standard as claims arising from the Fair Housing Act. *Woods v. Real Renters Ltd.*, 01 CIV. 0269 (MHD), 2007 WL 656907 (S.D.N.Y. Mar. 1, 2007) (citing *Mitchell*, 350 F.3d at 47 n.4; *Hughes v. Lillian Goldman Family, LLC*, 153 F. Supp. 2d 435, 453 n. 11 (S.D.N.Y. 2001));

see also, Open Hous. Ctr., Inc. v. Kessler Realty, Inc., 96-CV-6234 (ILG), 2001 WL 1328446 (E.D.N.Y. Sept. 18, 2001).

For the reasons addressed above, a genuine issue of material facts remains as to whether Defendant Celaj aided and abetted discrimination against Plaintiffs in the terms, conditions, and privileges of sale or rental of a dwelling because of race by “steering” Plaintiffs Carter and James away from the Apartments. Therefore, Defendant Celaj’s motion for summary judgment as to the NYSHRL and NYCHRL claims is denied.

CONCLUSION

Defendant Celaj’s motion for summary judgment is granted in part and denied in part. Plaintiffs claim pursuant to section 3604(d) of the Fair Housing Act, section 296(5) of the NYSHRL, and section 8-107(5) of the NYCHRL are dismissed. Defendant Celaj’s motion as to Plaintiffs’ claims under section 3604(b) of the FHA, section 296(6) of the NYSHRL, and section 8-107(6) of the NYCHRL is denied.

Dated: March 9, 2011



U.S.D.J.

BY ECF TO ALL PARTIES