



Testimony of Fred Freiberg, Executive Director, Fair Housing Justice Center (FHJC)

Hearing of the New York City Council Committee on Housing & Buildings

November 8, 2017 – 10:00 a.m.

The Fair Housing Justice Center (FHJC), a regional civil rights organization based in New York City, strongly supports passage of the Fair Residential Cooperative Disclosure Law (Intro 1458). In our view, this law will bring greater fairness, accountability, and transparency to a process that has, for too long, been cloaked in secrecy.

The passage of laws that prohibit housing discrimination has resulted in some significant changes in housing market practices. The very “visible” walls that once characterized most housing discrimination still exist, but are far less common (e.g., slammed doors, blatant discriminatory comments, overt denials, etc.). Today, the bulk of discriminatory housing practices are more subtle and difficult to detect. More often it is the “invisible” walls that prevent people from obtaining available housing (e.g. selective marketing, misrepresentations about availabilities, policies that have a disparate impact, etc.). The problem with these invisible walls is that they are rarely detected by ordinary consumers and the practices are difficult to document. Consequently, few complaints are filed and enforcement action is rarely taken....so the discrimination continues. The invisibility of this housing discrimination ensures its sustainability. The late civil rights leader James Farmer, said it another way, “Institutional practices, it seems, perpetuate themselves by their invisibility.”

Our organization has found that some of these “invisible” walls can be documented and eliminated through testing investigations conducted at the pre-application or pre-purchase stage of a housing transaction. In 2009, the FHJC investigated two large housing cooperatives in the Throggs Neck area of the Bronx. These co-ops are structured as neighborhoods primarily comprised of single family homes and combined have roughly a thousand housing units. At the time, both predominantly white co-ops maintained and enforced a policy that prospective buyers, to be qualified, were required to have letters of personal reference from three (3) existing shareholders. The FHJC conducted a covert testing investigation involving a real estate agent who had sold homes in these two developments for over 40 years. That investigation yielded evidence of racial discrimination. A federal lawsuit was filed in 2010 and, by 2013, both co-ops had agreed to settle with the FHJC. The settlements contained extensive injunctive relief, including elimination of the three-reference letter rule, and a total monetary recovery of over \$500,000. In addition, the real estate agent involved in the case agreed to surrender her real estate license.

But some housing discrimination occurs at a much later stage of a transaction. These practices are often so shrouded by secrecy that consumers are unable to glean any insights about what happened and testing may not be the most effective investigative tool. This leaves consumers with little or no information about why they were rejected and few, if any, options to secure their fair housing rights. Nowhere is that more true than in the housing cooperative market of New York City.

Consumers looking to purchase housing in New York City know all too well that it can be an extraordinarily complex, time-consuming, expensive, and frustrating process. Most buyers assume that once they have obtained an accepted offer to purchase from a seller, they are well on their way to becoming owners. However, when it comes to purchasing shares in a NYC housing cooperative, one of the more affordable ownership options available to New Yorkers, reaching the stage of having an accepted offer and securing suitable financing in no way ensures a favorable outcome for a prospective buyer. When potential, qualified buyers are subjected to intense scrutiny by a co-op board, summarily rejected, and subsequently provided no reason, this process can be personally and economically devastating to the prospective buyers. Too often, there is little or no recourse.

We recognize that there are myriad reasons why prospective co-op buyers could be lawfully denied, but experience tells us that it is relatively easy for illegal bias to infect the furtive decision-making process of a co-op board. Over the past decade, the FHJC has received dozens of discrimination complaints from individuals who were seeking to purchase shares in or rent from housing cooperatives. Most of the complaints have alleged discrimination based on race, national origin, disability, family status, age, or sexual orientation. Here are a few examples of the complaints:

- In 2007, a young openly lesbian woman attempted to purchase a co-op in Brooklyn. During the co-op board interview, the woman was told by a board member that she “was not what they were expecting.” Despite having an accepted offer from a seller and meeting all of the financial qualifications, she was rejected with no reason given. She decided not to pursue her claim.
- When a woman with disabilities who used a wheelchair attempted to purchase a co-op in the Riverdale area of the Bronx in 2008, she was hoping to make a few modifications to the unit that she was planning to purchase to make it accessible for her. But when her architectural plans went to the board for approval with her accepted offer, she was summarily rejected by the board with no reason given. When she contacted our organization, we were unable to test the situation. With the assistance of the FHJC, she obtained legal counsel and, in 2010, she filed a federal lawsuit alleging discrimination based on disability. She was fortunate in that she was able to obtain a remedy and her claims were settled in 2011 for injunctive relief and \$35,000 in damages.
- In 2014, a South Asian man attempted to purchase a co-op in a predominantly white Manhattan neighborhood. Following an interview, the sale was not approved by the co-op board with no reason given. While the seller was eager to sell to him, she told the buyer that the board is “very strict with young buyers” and that perhaps his application would have been approved “if his name was easier to pronounce.” The buyer felt that he had been denied based on his race and national origin but decided not to pursue the matter.

Housing cooperatives have managed to erect “invisible” walls that continue to screen out and exclude prospective residents, often with no reason or justification offered. To the extent that co-op boards are engaging in unlawful discrimination, they are restricting housing choice and contributing to the already pronounced patterns of residential racial segregation in New York City. NYC Mayor Bill de Blasio, in speaking about segregation and the challenges of school integration, was quoted in a recent *New York Times* article saying, “We cannot change the basic reality of housing in New York City.” While we strenuously disagree and believe the City has a duty to take steps to remove barriers to housing choice, reduce segregation, and affirmatively further fair housing, here is one small change the City Council and Mayor can make without further delay. Pass this modest co-op disclosure bill and sign it into law!

Intro 1458, the Fair Residential Cooperative Disclosure Law, requires co-ops to identify and disclose, in a timely manner, the specific reason or reasons for rejecting an applicant. Once a rejected applicant receives a clear reason or reasons for denial, the consumer can better evaluate whether they have any reason to believe that unlawful housing discrimination may have occurred. Under this law, should a consumer decide to pursue a housing discrimination complaint or lawsuit, a co-op can defend based only on the reasons provided to the applicant. We believe this would bring greater transparency, accountability, and equity to the process. We urge the City Council to pass this law. It is a reasonable piece of legislation consistent with the spirit and letter of the City’s Human Rights Law. It will help to ensure that the fair housing rights of New Yorkers are protected in the housing cooperative market.

Thank you very much for your time and consideration.

The mission of the Fair Housing Justice Center (FHJC) is to eliminate housing discrimination; promote policies and programs that foster open, accessible, and inclusive communities; and strengthen the enforcement of fair housing laws. The FHJC provides counseling on fair housing rights, investigative assistance including testing, and referrals to administrative agencies and cooperating attorneys. The FHJC operates one of the largest and most effective fair housing testing programs in the nation. FHJC’s program employs over 160 testers, mostly professional actors, who have been trained to participate in housing discrimination investigations. These investigations are coordinated by a highly skilled team of investigators who utilize state of the art technology. Over the past decade, FHJC investigations have led to successful legal challenges that have opened more than 60,000 units of housing to previously excluded populations, changed the way many housing providers do business, and resulted in a total monetary recovery of over \$30 million. Information about the FHJC can be found at www.fairhousingjustice.org.

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