

# **TESTIMONY OF DIANE L. HOUK, EXECUTIVE DIRECTOR FAIR HOUSING JUSTICE CENTER OF HELP USA**

**Joint Hearing of New York City Council Civil Rights Committee and  
Consumer Affairs Committee**

**November 28, 2006**

## **Introduction and Background**

Let me begin by thanking Council Member Seabrook and Council Member Comrie for holding this hearing on "Achieving Fair Housing Choice in New York City." My name is Diane Houk and I am the Executive Director of the Fair Housing Justice Center (FHJC), a program of HELP USA. The Fair Housing Justice Center opened in 2005 to challenge systemic housing discrimination, advocate for policies that promote open and inclusive communities, and work to upgrade and strengthen fair housing law enforcement at the local, state, and national level.

The FHJC is a program of HELP USA, a New York City-based not-for-profit organization that has been developing housing and providing social services for homeless families for 20 years. HELP USA's provides transitional housing for homeless individuals and families, domestic violence shelters, permanent affordable rental housing, social service programs to prevent homelessness, day care centers, and other supportive services for homeless children and adults.

Concerned that housing opportunities and choices available to HELP clients and others searching for permanent affordable housing were being restricted by the persistence of illegal housing discrimination, HELP USA took action and committed resources to address this important issue. In 2004, HELP USA recruited me to come to New York City to assist with the creation of the FHJC. At the time, I was working in Washington, D.C. at the Department of Justice where I had been litigating fair housing cases in the Civil Rights Division for 13 years. Prior to that, I had been a fair housing attorney in Milwaukee,

Wisconsin, for seven years after graduating in 1983 from Columbia University's School of Law.

In creating the FHJC and during our first year and a half of operation, I have confronted several realities which should be of concern to this public body. First and foremost, illegal housing discrimination continues to significantly limit the housing choices of many families and individuals in our community. Pronounced and conspicuous patterns of residential racial segregation persist in New York City and the entire region. Government at all levels is failing to vigorously enforce existing fair housing laws.

*No longer* is our nation segregated by law as it was in the first half of the 20th century when race restrictive covenants, federally mandated redlining policies, discriminatory FHA policies, de jure segregation in schools, and a panoply of other government actions worked in concert with private real estate interests to rigidly segregate our communities by race and national origin. The civil rights movement of the last century dismantled the legal foundation on which segregation was built and secured passage of civil rights laws that now prohibit discrimination in public accommodations, voting, employment, housing and most areas of community life. These laws provided great hope to millions of Americans and a promise of expanded opportunities, a promise that has *not yet* been fulfilled to this day.

This "*no longer/not yet*" status is a useful way to describe where we are in the present. It is a condition of social separation perpetuated, in no small part, by continuing patterns of discrimination. Much of this discrimination goes unchallenged due to the woefully inadequate enforcement of fair housing and other civil rights laws. This condition is further exacerbated by public policies that too often restrict housing choice and reinforce residential segregation. Rather than reverse the legacy of segregation, systemic housing discrimination and ill-conceived public policies work in tandem to perpetuate residential separation. This condition of residential separation fuels a pernicious and self-sustaining cycle of inequality in communities.

We have gone from apartheid to living apart. When access to housing is restricted and people become isolated or balkanized by race, national origin or disability, the result has myriad adverse consequences. Separation reduces intergroup contact that breaks down bias, stereotypes and prejudices. The spatial mismatch between populations needing work and the location of available jobs can severely limit employment opportunities. Residential segregation frequently results in segregated schools. Unequal access to employment and educational opportunities creates disparities in income and wealth. Economic disadvantage reinforces stereotypes and adversely impacts mobility. Fear and distrust between isolated populations can lead to "self-steering" and more pronounced segregation. The cycle of inequality that exists in most metropolitan areas, including the New York City region, requires intervention at many levels.

### **Nature and Extent of Contemporary Housing Discrimination**

Unlawful housing discrimination based on race and national origin remains a serious problem in New York City and throughout our metropolitan areas. The HUD-sponsored Housing Discrimination Study (HDS) reported in 2002 and 2003 that African Americans, Latinos, and Asian/Pacific Islanders are still at considerable risk of being discriminated against in the sale and rental of housing.<sup>1</sup> For example, in the New York metropolitan area, rates of discrimination faced by African American and Latino home buyers and Latino renters were well *above the national average*. The overall measures of consistent adverse treatment by tenure and population group appear in the chart below:

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<sup>1</sup> HDS used testers who posed as prospective renters and buyers of real estate in order to document housing market practices.

RESULTS FROM NATIONAL HOUSING DISCRIMINATION STUDY (HDS) – 2003 % of Tests Which Evidenced Consistent Adverse Treatment						
Area	Black Home Buyers	Black Renters	Hispanic Home Buyers	Hispanic Renters	API Home Buyers	API Renters
National	16.8%	20.3%	18.3%	23.4%	20.4	21.5%
New York Metro Area	23.5%	20.0%	32.9%	27.3%	(Not Available)	

A considerable amount of housing discrimination goes unreported and thus undetected because contemporary housing discrimination takes more subtle forms and is frequently camouflaged by common courtesies. Housing providers intent upon violating the law and eluding detection have developed techniques and procedures that make it difficult, if not impossible, for an ordinary home seeker to know that unlawful discrimination has occurred. As a result, many home seekers alter their housing searches and consequently limit their housing choices without realizing that they have been afforded unequal treatment or denied housing.

**The Reality of Residential Segregation**

The persistence of illegal housing discrimination is undoubtedly a contributing factor in reinforcing patterns of residential segregation in New York. According to the Lewis Mumford Center for Comparative Urban and Regional Research at the University of Albany, the New York metropolitan area ranked fourth in the country in residential racial segregation for African Americans when compared to other metropolitan areas.<sup>2</sup> The following chart indicates the black/white dissimilarity index for 2000 along with the ranking of the metropolitan areas for New York City (all five Boroughs of New York City and Westchester

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<sup>2</sup> A dissimilarity index measures whether one group is distributed across census tracts in a metropolitan area in the same way as another group. A dissimilarity score can range from 0 to 100. A dissimilarity index of 60 indicates that 60% of the members of one group would need to move in order for both groups to be equally distributed.

County) and Long Island (Nassau and Suffolk Counties) for 2000, 1990 and 1980:

Metropolitan Area	Dissimilarity Score (Black Population)	National Segregation Ranking		
		2000	1990	1980
New York City	82	4	8	17
Nassau-Suffolk	74	12	13	31

According to the same dissimilarity index, the New York metropolitan area ranked as the fifth most segregated metropolitan area for Hispanics and the ninth most segregated metropolitan area for Asian Americans.

### **Failure to Enforce Fair Housing Laws**

With few exceptions, enforcement of fair housing laws at the local, state, and national level is uneven and under-funded. At the federal level, HUD has been issuing fewer housing discrimination charges and there has been a diminution of fair housing enforcement activity by the Civil Rights Division of the Department of Justice. Unfortunately, this conspicuous decrease in federal fair housing enforcement activity has not occurred in response to a corresponding reduction in housing discrimination, but instead stems from a shift in national priorities. The longstanding commitment of the United States Department of Justice to combat race discrimination in housing has shown a steady weakening. Indeed, only 9% of the systemic lawsuits filed by the Civil Rights Division in FY2005 alleging race discrimination as compared to an average of 40% of the Division's annual case filings from 1995-2000.

Likewise, many public agencies at the state and local level charged with enforcing fair housing and fair lending laws receive few complaints, lack training and resources, fail to complete investigations in a timely manner, and seldom achieve an outcome or remedy favorable to victims of discrimination or the community. An audit published in 2006 by the New York State Office of the Comptroller reported that on average it takes at least 6 years for an

administrative complaint filed with the State's Division on Human Rights to advance to a final resolution by an administrative law judge. Our experience within the last 18 months with DHR has revealed a number of serious deficiencies. For example, DHR has different and inconsistent intake procedures and forms that vary from office to office just within New York City. This means that New York City residents who contact DHR to inquire about filing a housing discrimination complaint receive different and inaccurate information about the process and are often discouraged from filing housing discrimination complaints. Moreover, in one instance where we provided assistance, DHR issued a no probable cause finding without interviewing the complainant or obtaining documentation related to the complaint. In that same case, DHR found that the respondents had not discriminated against the complainant, even though they admitted to asking the complainant her sexual orientation, because the respondents promised to change their discriminatory rental policy in the future. In this instance, our cooperating attorneys filed suit in state court and obtained a court order requiring DHR to reopen the matter and conduct a proper investigation. Months later, DHR has still failed to interview any witnesses or request any documents.

In New York City, the local Human Rights Law is not substantially equivalent to the federal Fair Housing Act, and thus, the City is deprived of federal funds from HUD that could be used to improve its process for investigating housing discrimination complaints. Changes are needed to the Commission's current intake and investigative process to ensure fairness and equity.

Although a complaint-handling component is vital to any fair housing enforcement effort, such as a local human rights commission, it is a woefully inadequate approach if the goal is to create broader systemic change. The subtleties of contemporary housing discrimination, the reluctance of individuals to file complaints, and the lackluster track record of most government enforcement agencies means that complaint responsive enforcement strategies yield little in the way of lasting results. Given the subtleties of contemporary housing

discrimination and the obvious limitations to a purely complaint driven approach, vigorous enforcement must include pro-active testing of the housing market to identify and document systemic forms of housing discrimination or discriminatory housing practices that may go unreported but are restricting housing choices of people in our community. None of New York's local or state agencies possess internal testing programs capable of gathering evidence where patterns and practices of discrimination are occurring in the housing market.

Since the passage of the federal Fair Housing Act in 1968, private fair housing groups with nominal resources have been instrumental in advancing the law and securing significant remedies for victims of housing discrimination. In more recent years, the paucity of resources devoted by local, state, and federal government agencies to supporting effective fair housing enforcement activities makes it difficult to sustain programs like the FHJC. Some parts of the country are no longer served by private fair housing groups. In New York City, the Open Housing Center closed in 2003 after more than 30 years of providing fair housing services to the community.

### **FHJC Experience to Date**

The FHJC provides counseling, investigative assistance, including fair housing testing, and assistance with legal referrals to individuals and organizations alleging violations of fair housing laws. While addressing housing discrimination that impacts all populations in the New York area, the FHJC focuses much of its work on challenging and removing discriminatory barriers to affordable housing faced by lower-income families and individuals in New York City. Housing discrimination based on race, national origin, family status, and disability continues to deny affordable housing opportunities to individual tenants and homebuyers. These same individual acts of discrimination, when left unchallenged, have a multiplying effect that reinforces residential racial and economic segregation, undermines neighborhood stability, and stifles community development. Because landlords, real estate brokers, and others involved in housing transactions operate throughout the City and, in some cases, the

metropolitan area, the FHJC has adopted a regional strategy to promoting fair housing.

Since opening in April 2005, the FHJC has received approximately 160 housing discrimination complaints. 52% of the allegations received involved race, color, or national origin discrimination, 31% involved disability discrimination, and the remainder involved allegations of discrimination based on sex, including sexual harassment, familial status, sexual orientation, age, and other illegal forms of discrimination in the rental and sales markets. With the assistance of the FHJC, 6 lawsuits have been filed in federal and state court and 12 complaints have been filed with HUD and the New York State Division of Human Rights. Currently, the FHJC has referred an additional 7 housing discrimination complaints to cooperating attorneys, 15 to the U.S. Attorney for the Southern District of New York, and 2 to the New York State Attorney General for further enforcement action. In the coming weeks, we expect that four more lawsuits will be filed in federal court by our cooperating attorneys on behalf of tenants alleging race discrimination by area landlords, real estate agents, rental management companies, and developers. In three of these cases, the FHJC conducted testing investigations to obtain information to corroborate the tenants' allegations.

The housing discrimination complaints received by the FHJC since April 2005 have involved a wide variety of housing providers including private landlords, real estate brokers, subsidized and supportive services housing, SROs, coops, condominiums, and local government housing programs. In one instance, a homeless woman living at a city transitional housing shelter was required to state her sexual orientation as a condition of the rental application process to live in an SRO. In another, a low-income mother with a severely disabled child was denied a request to have a washer/dryer installed in her apartment even though she lived on the 4<sup>th</sup> floor of a walk-up building with no laundry room and needed to provide a clean and sterile environment for her daughter who has an impaired immune system and developmental disabilities. In a third, a white Brooklyn resident was harassed by his landlord and threatened



with eviction because he refused to prohibit his children from inviting African American and Latino friends to visit the apartment. In Manhattan, a woman has filed a federal lawsuit alleging that a landlord sexually harassed her when she attempted to apply to rent an apartment. In that case, the woman is alleging that the landlord offered to lower the amount of rent in exchange for sexual favors. In Queens, a family with children alleges in their lawsuit that a landlord openly stated that he refused to rent to households with children. A man with multiple sclerosis has filed a HUD complaint alleging that a Brooklyn coop board rejected his application to purchase a ground floor unit because the coop board did not want a disabled person living in the building.

Two of the six housing discrimination lawsuits filed based on evidence collected by the FHJC already have been resolved with federal court orders to stop the illegal behavior, change the landlord's policies, and provide the tenants with financial resources that can be used to pay for rent and other housing related and living expenses. More information about the types of cases in which FHJC has provided assistance may be found at our website located at [www.fairhousingjustice.org](http://www.fairhousingjustice.org).

The FHJC investigates many of the complaints it receives by using "testers" to determine whether housing providers are providing the same information and services to similarly situated applicants. Our testing program, called "Acting for Justice," recruits, trains, and hires underemployed actors through the Actors' Work Program of the Actors' Fund of America. Our Acting for Justice program is a vital service provided to those who suspect that they have encountered unlawful housing discrimination. This covert investigative tool is frequently capable of gathering credible and objective information that enables victims of housing discrimination to meet their burden of proof. The complexity of the New York housing market, the absence of documentary evidence in many housing discrimination cases, and the myriad subtle ways that housing providers have found to discriminate and elude detection makes testing a challenging but essential investigative tool for gathering evidence. Without such testing evidence

many complainants would simply fail to prove their claims and housing discrimination would go unchallenged.

**Recommendations:**

First, we recommend that the New York City Council examine all existing city housing programs to ensure that each program is affirmatively furthering fair housing. This review should entail evaluating whether each housing program expands housing choice and reduces residential segregation. For example, does the program require the housing provider to adopt and implement an affirmative marketing plan to attract a broad pool of qualified applicants? Does the program require the housing provider to adopt rental procedures that do not impose discriminatory terms and conditions on minority applicants and persons with disabilities? Does the program require the housing provider to take affirmative steps to ensure that its housing is accessible to persons with disabilities?

Second, we recommend that the City of New York amend its Human Rights Law to prohibit "lawful source of income" discrimination, including protections for persons with rental subsidies, and advocate for similar changes to the State fair housing law. Households receiving income from Social Security, SSI/SSD, and other forms of public assistance should have that income treated no differently than income from employment. Wisconsin has included lawful source of income as a protected characteristic in its fair housing law since 1980 and yet New Yorkers do not enjoy such protection. Additional protections such as those enacted more recently by the State of New Jersey and the District of Columbia prohibit discrimination against persons with housing subsidies and these protections are also essential to affording lower income households a wider range of housing choices and opportunities.

Third, we recommend that the City of New York allocate resources to upgrade and strengthen fair housing enforcement. The New York City Council should amend the City Human Rights Law to upgrade the local enforcement process so that the Human Rights Law is "substantially equivalent" to the federal Fair Housing Act. Also, while the FHJC provides counseling, investigative

assistance (testing), and legal referrals to victims of housing discrimination and possesses the expertise and capacity to implement pro-active testing investigations to identify and document patterns of discrimination in the local market, the program currently receives no direct financial support from the City of New York. By supporting programs like the FHJC, the City would affirmatively further fair housing and expand housing choices for all of its residents.

Thank you very much for this opportunity and for your attention.