

Case No. 14UD08595

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
APPEALS DIVISION**

SACRAMENTO MANOR, INC.,

Plaintiff and Respondent,

v.

DOROTHY MORRIS,

Defendant and Appellant.

**BRIEF OF AMICUS CURIAE
IN SUPPORT OF RESPONDENTS' POSITION**

On Appeal from the Superior Court for the State of California
County of Sacramento, Case No. 14UD08595
Honorable Christopher E. Krueger

HEARING DATE APRIL 15, 2016

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Pursuant to California Rule of Court 8.200(c), and the leave sought in the Request to File Brief of Amicus Curiae submitted concurrently herewith, the California Apartment Association (hereinafter "CAA") respectfully submits this brief as Amicus Curiae in support of the positions of Plaintiff and Respondent Sacramento Manor, Inc. ("Manor") as to the issues presented with respect to the appeal made by Plaintiff and Appellant Dorothy Morris ("Ms. Morris") to enlarge the "protected group" classification under California's Unruh Civil Rights Act (California Civil Code §51(b)) to include as protected group members elderly tenants in an elderly community participating in a Section 8 Housing Voucher Program.

I.

INTRODUCTION

CAA is the largest rental housing trade association in the country, representing more than 50,000 owners and property operators who are responsible for nearly two million rental housing units throughout California. CAA has the goal of promoting fairness and equality in the rental of residential housing and aiding in the availability of high quality rental housing in California. CAA has advocated on behalf of rental housing providers in legislative, judicial and other forums in California and nationally.

CAA's desires to assist this Court in understanding the public policy issues related to the proposed enlargement of the "protected group" classification under California's Unruh Civil Rights Act (California Civil Code §51(b)) and the potential far-reaching effects of the outcome of this case. Specifically, CAA seeks to preserve the legislatively mandated voluntary nature of the federal Section 8 Voucher Program in California. The issue is not whether a property owner can choose to exclude recipients of public assistance from their properties, a proposition CAA certainly would not endorse, but whether property owners can be compelled by State or local governments to remain contracted into what many consider oppressive governmental contracts thereby subjecting themselves to the intrusive regulatory requirements of the federal Section 8

Voucher Program – participation in which Congress unequivocally intended to be voluntary.

The Section 8 Voucher Program was created by the United States Congress "for the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing. . . ." 42 U.S.C. 1437f(a). The Program was designed to encourage voluntary private sector participation in the federal government's efforts to expand the available housing stock for low-income residents. Participation in the Section 8 Program requires a property owner to sacrifice private property rights. Mandatory participation forces owners to comply with burdensome government regulations and procedures which can significantly impact the financial viability of a property. As an inducement to participate, statutory provisions were enacted to protect the property owner's ability to opt out of the program; leaving the door open for any owner to exit the program for business or economic reasons, which reasons may vary from owner to owner. If this Court were to reverse the trial court, it would have the practical effect of impermissibly forcing property owners to participate in the Section 8 Voucher Program indefinitely.

CAA urges this Court to uphold the Trial Court's decision and preserve a property owner's election not to participate in the voluntary federal Section 8 Voucher Program without risking discrimination charges grounded in California's Unruh Civil Rights Act.

II.

BRIEF STATEMENT OF FACTS

Because the facts and procedural history of the case are adequately set forth in Appellant's and Respondents' Briefs, a comprehensive statement of facts is not repeated herein. Instead, CAA includes the following brief summary for the sake of completeness of this Amicus Brief:

In February 2013, Manor and Ms. Morris executed a month-to-month Rental Agreement to allow for Ms. Morris' tenancy in a unit at a senior apartment complex in Sacramento operated by Manor. Manor and Ms. Morris also executed a Sacramento Housing and Redevelopment Agency ("SHRA") contract under which SHRA agreed to pay a portion of Ms. Morris' rent to Manor pursuant to a Section 8 federally funded program called Housing Choice Voucher Program. The SHRA contract explicitly advised and provided that Manor could terminate the contract for convenience.

In mid-2014, Manor made a business decision to withdrawal from participation in any and all Section 8 federally funded program. In compliance with the applicable housing contracts, Manor issued 90 day notices to terminate the tenancy to all tenants participating in Section 8 programs, which extended notice period is required under the Program beyond what is normally required in California, which included, but not limited to, Ms. Morris.

III.

ISSUES ADDRESSED IN THIS AMICUS CURIAE BRIEF

Ms. Morris argues that Manor's unilateral termination of tenancy based solely on tenants receiving Section 8 assistance is in violation of the Unruh Civil Rights Act.¹

Ms. Morris also argues that Manor's unilateral termination of tenancy of elderly tenants in an elderly community due to receiving Section 8 assistance is in violation of the Unruh Civil Rights Act.²

CAA disagrees with both of Ms. Morris' arguments because both federal and state statutory and case law confirm that a property owner's decision to participate in a Section 8 Housing Voucher Programs is purely voluntary. If by withdrawing from a Section 8 Housing Voucher Program a property owner becomes subject to violations of the Unruh

¹ Appellant's Corrected Opening Brief, p. 1.

² Appellant's Corrected Opening Brief, p. 1.

Civil Rights Act, the requisite voluntary component of the Program is obviated. Furthermore, subjecting a property owner to liability under the Unruh Civil Rights Act upon withdrawal from the Program will have a chilling effect on property owners' participation in such programs.

**IV.
ARGUMENT**

A. PARTICIPATION IN SECTION 8 HOUSING PROGRAMS MUST BE VOLUNTARY

As noted above, Section 8 was created "for the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing" 42 U.S.C. 1437f(a). The Housing Voucher Program was designed to encourage voluntary private sector participation in the federal government's efforts to expand the available housing stock for low-income residents.

Several federal courts have recognized that one of the fundamental purposes of the Section 8 Program was to advance *voluntary* participation by property owners. See, Graoch Associates #33 Limited Partnership d/b/a Autumn Run Apartments v. Louisville and Jefferson County Metro Human Relations Commission, 430 F. Supp. 2d 676 (W.D. Ky. 2006); Salute v. Stratford Greens Garden Apartments, 136 F.3d 293 (2d Cir. 1998); Knapp v. Eagle Property Management Corp., 54 F.3d 1272 (7th Cir. 1995).

In Graoch, the Federal District Court held that a landlord's withdrawal from the federal Section 8 Program was not *prima facie* evidence of discrimination under the federal Fair Housing Act. Graoch, 430 F. Supp. 2d at 682. In reaching its decision, the court clearly recognized the intent of Congress to make participation in the Program voluntary. The court concluded:

Many landlords would no doubt be reluctant to join a program from which there was, in reality and existentially, no

exit.² Such a result would certainly not be consistent with Congress' intent in creating such a program.

²Sartre, *Huis Clos*, 1943. While the court does not here embrace existentialist views, we nevertheless note the Orwellian absurdity of a "voluntary" program attracting participants through a one-way door, past which they would become trapped forever by the impact of any attempt to leave.

Graoch, 430 F. Supp. 2d at 679, fn. 2. In reaching its conclusions, the Court in Graoch relied on the Second and Seventh Circuit cases of Salute v. Stratford Greens Garden Apartments, 136 F.3d 293 (2d Cir. 1998) and Knapp v. Eagle Property Management Corp., 54 F.3d 1272 (7th Cir. 1995).

In Salute, although addressing a subsequently repealed section of the statute, the Court of Appeals for the Second Circuit explicitly recognized the potential burdens associated with participation. 136 F.3d at 295. The defendant in Salute refused to rent to handicapped plaintiffs who received Section 8 housing assistance because he refused to rent apartments to Section 8 certificate holders. Salute, 136 F.3d at 295. The court found:

We think that the voluntariness provision of Section 8 reflects a congressional intent that the burdens of Section 8 participation are substantial enough that *participation should not be forced on landlords*, either as an accommodation to handicap or otherwise. The "take one, take all" and "endless lease" provisions were part of the statute when the voluntariness provision was adopted and they reflect the kind of burdens that the federal government may impose on participating landlords. These burdens are one side of a coin, and the voluntariness is the other. [fn] The repeal of the "take one, take all" and "endless lease" provisions does not affect the voluntariness of the Section 8 program, which remains as voluntary today as it was when originally enacted.

The repeal of these provisions does not reduce the potential for burdensome requirements. A landlord may consider that

participation in a federal program will or may entail financial audits, maintenance requirements, inspection of the premises, reporting requirements, increased risk of litigation and so-on.

Salute v. Stratford Greens Garden Apartments, 136 F.3d at 300 (emphasis added).

In Knapp, the plaintiff alleged the defendants had discriminated against her by refusing "to rent her an apartment because of her race and her status as a recipient of federal rent assistance under the 'section 8' voucher program." Knapp, 54 F.3d at 1275. In addressing the question of what remedies are available to redress a violation of Section 1437f(t), the Seventh Circuit Court of Appeals stated:

In enacting § 1437f(t), Congress intended to increase the availability of low-income housing. To do so, the section 8 program must be attractive to owners and must ensure that once they are a part of the program they fully participate by continuing to accept voucher holders as tenants. Allowing the recovery of potentially unlimited compensatory damages undoubtedly would deter owners from participating in the section 8 program and would be counterproductive to congressional goals.

Knapp, 54 F.3d at 1278. Accordingly, there is no doubt that participation in the Section 8 Voucher Program is voluntary. The language of California's Fair Employment and Housing Act does not change the voluntary aspect of the program.

B. LANDLORDS HAVE A LEGITIMATE BUSINESS INTEREST IN THE VOLUNTARY COMPONENT OF SECTION 8 HOUSING VOUCHER PROGRAMS AND THE APPLICATION OF SAME.

Ms. Morris concedes that Section 8 Vouchers are not to be considered sources of income for the purposes of economic classification discrimination under California Government Code §12955.³ Alternatively, Ms. Morris contends that termination of

³ California Government Code §12955, makes it unlawful "for the owner of any housing accommodation to discriminate against or harass any person because of the . . . source of

tenancy based on tenants receiving Section 8 assistance is in violation of the Unruh Civil Rights Act because is discrimination based on Personal Characteristics.⁴ Ms. Morris seeks to prevent landlords from voluntarily withdrawing from Section 8 Programs where the tenants have demonstrated a responsible rent payment history.⁵ Ms. Morris argues that eviction “of well established Section 8 tenants that have paid on time up until the eviction is of no legitimate business interest” to the property owners because the “paperwork was done in the beginning of the lease and all that was left to do for Sacramento Manor was to sit back and collect a check every month.”⁶ This argument is grounded in ignorance.

Participation in the Section 8 Program requires a property owner to voluntarily sacrifice many private property rights. Mandatory participation forces owners to comply with burdensome regulations and procedures which can significantly impact the financial viability of a property. For example, if a landlord accepts Section 8 vouchers, he/she is also required to enter into a housing assistance payment contract with the local housing authority (in this case, the SHRA). This HUD-mandated contract imposes several administrative burdens on the owner.

The landlord is required to include the specific tenancy addendums, the language of which is mandated by HUD, which for many will alter the landlord-tenant relationship. Participation in a Section 8 Housing Voucher Program typically limits the total amount of rent a landlord may receive for a unit occupied by a voucher holder. Despite local economic indicators, rents are limited to a HUD-determined fair market rent level. The subsidies that Section 8 provides to participating families are calculated as the difference

income . . . of that person." Cal. Gov't Code § 12955(a). Subsection (p)(1) of Government Code Section 12955 defines "source of income" as "lawful, verifiable income paid directly to a tenant or paid to a representative of a tenant." (See Sabi v. Sterling, 183 Cal.App.4th 916 (2010).)

⁴ Appellant's Corrected Opening Brief, p. 8-10.

⁵ Appellant's Corrected Opening Brief, p. 9-10.

⁶ Appellant's Corrected Opening Brief, p. 9.

between a percentage of household income and a unit's "fair market rent" which rent is limited by the local payment standard. Payment standards are governed by rent levels set by HUD which act to impose financial limits on the property owner's profits.

Another financial burden of participation in a Section 8 Housing Voucher Program is the inspection requirements associated therewith. The inspection requirements not only extend to the Section 8 unit itself, but also extend to the entire apartment community. Additionally, all relevant accounts and records of the property owner become subject to inspection. The frequency and intensity of such inspections and audits lie solely within the discretion of the housing authority. When the inspections and audits occur, the property owner must comply at his/her own time and expense.

Lastly, as Ms. Morris concedes,⁷ a property associated with a Section 8 Housing Voucher Program can be branded with a stigma which can act as a negative marketing campaign against the property. This, in turn, affects a property's rental values. Property owners are forced to combat the public perception in an ongoing effort to attract qualified applicants and to maximize the property's returns. In many instances, property owners incur expenses for marketing materials and for offering incentives which the property owners would not otherwise incur.

Based on these factors, Ms. Morris' argument that a landlord has no legitimate business interest in being permitted to withdraw from a Section 8 Housing Voucher Program on a voluntary basis lacks merit. Because Ms. Morris' "no legitimate business interest" arguments fails, so too must her proposal in favor of the enlargement of the "protected group" classification under California's Unruh Civil Rights Act (California Civil Code §51(b)) to include a prohibition against the eviction of tenants receiving Section 8 assistance based on Personal Characteristics.

⁷ Appellant's Corrected Opening Brief, p. 10.

V.

CONCLUSION

This Court must preserve the federally mandated voluntary nature of the Section 8 Voucher Program. Unless this Court upholds the Trial Court's ruling, Respondents and others similarly situated will be perpetually locked into the Section 8 Program, regardless of potential economic harm and irrespective of their property rights. The decision could have far-reaching implications as it has the potential implication of imposing on landlords the obligation to participate in the Section 8 Voucher Program, which is otherwise voluntary under Federal legislation. As such, the California Apartment Association urges this Court to uphold the decision of the Trial Court and find that refusing to participate in the Section 8 Program does not constitute source of income discrimination under FEHA.

DATED: February 23, 2016

PAHL & MCCAY
A Professional Corporation

By: 

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PROOF OF SERVICE

I am a citizen of the United States and an employee of the County aforesaid. I am over the age of eighteen years and not a party to the within action. My business address is 225 West Santa Clara Street, Suite 1500, San Jose, California 95113-1752. On the date mentioned below, I caused a true copy(ies) of the following document(s) to be served on the parties below using the method(s) checked:

BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENTS' POSITION

- First Class Mail. I am familiar with the regular mail collection and processing practices of the business. The mail will be deposited with the United States Postal Service on the same day following ordinary business practices. I enclosed the above-mentioned document(s) in a sealed envelope with postage thereon fully prepaid in the United States Post Office mail box at San Jose, California.
- Facsimile at the fax numbers shown after each name below.
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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on February 23, 2016, at San Jose, California.



Michelle Garcia