Housing Rights Initiative, Inc. v Elliman
2023 NY Slip Op 31513(U)
May 4, 2023
Supreme Court, New York County
Docket Number: Index No. 154472/2022
Judge: Mary V. Rosado
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. MARY V. ROSADO** *Justice*

PART **33M**

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INDEX NO. 154472/2022

MOTION DATE 12/06/2022

MOTION SEQ. NO. 017

HOUSING RIGHTS INITIATIVE, INC.,

Plaintiff,

- v -

DOUGLAS ELLIMAN, MARJORIE TORNATORE, MARYAM DAGHOUMI, DORIAN NASTO, TOY ONG CHEUNG, 109 CONGRESS STREET LLC,254-125 LLC,COLDWELL BANKER RELIABLE, CHRISTIAN FLOREZ, OXFORD PROPERTY GROUP, MAY AMOS, 750 TENTH AVE REALTY LLC,AAG MANAGEMENT, INC.,REMAX EDGE, ELENA LEAL, 9430 RIDGE OWNERS CORP, KEYSTONE REALTY USA, PARESHKUMAR SHAH, GLEN OAKS VILLAGE OWNERS, INC.,CENTURY HOMES REALTY GROUP LLC,JANE GAO, STEVEN CORCORAN REAL ESTATE LLC,SHERRIE MORGAN, HOMEMAX REALTY, ERIC ZHAO, 351 MARINE OWNERS CORP, EXP REALTY, GORDANA SKUGOR, NEW YORK CASAS, CHARLAR ACAR, RALPH FRANKEN LLC,MOMENTUM REAL ESTATE, LILY LUU, STANLEY CHEUNG, AVANGUARD REALTY CORP, JENNY VASSILEVA, DAGINATI LLC,SARDELL REALTY LLC,KAREN SARDELL, EDEL FAMILY MANAGEMENT CORP, JHOLEYNI PENA, REAL NEW YORK, EDWARD XU, CUCCIA EDWARD, J., CHRISTY CHOK, L & C REALTY ASSOCIATE, INC.,J SIKAR REALTY, NELLY BERNSTEIN, AAA Y.S. REALTY INC, FEI CHEN, NYC MODERN REALTY, INC.,HELEN LIN, GUO XIAN KAI, THE COOP CONNECTION LLC,EILEEN MASSONE, SRL MANAGEMENT LLC,VLADISLAV DAVIDOV, BROOKLYN PROPERTIES OF SEVENTH AVENUE, INC.,CARLOS ARZE, 685 STERLING ASSOCIATES LLC,REALTEGRITY NY, CARYL SCHIFF, FOLEY'S 8 REAL ESTATE, TIM FOLEY, MONTGOMERY 5 ASSOCIATES LLC,J. WINTER REAL ESTATE, JEFF WINTER, AIDONIS REALTY, MARIA AIDONIS, KELLER WILLIAMS REALTY OF GREATER NASSAU COUNTY, JOHN ARGYROS, JOHN SILVER LLC,MACCABEE 1 REALTY CORP, DAVID NAJAFI, ASMA BEGUM EMRAN, REALTY PLUS GROUP, INC.,DAE KIM, YOUNGGIL CORP, COMFORT PROPERTIES, INC.,OSAMA GHEITH, AMERICAN REALTY AIJ 214, LLC,FULTONEX REALTY, EUNICE CHEN, THE PAVILION OWNERS CORP, NEW SPIRIT REALTY, INC.,FRANK DESANTIS, APTS 601 79 LLC,HOMETOWN PROPERTIES, JACK CHENG, ABBA REALTY ASSOCIATES, ANAT ELGARISI, MENDEL BOYMELGREEN, RENAISSANCE EQUITY HOLDINGS

DECISION + ORDER ON MOTION

LLC A, CONTACT REALTY, DAYANA ZAMORA, B. BELINDA REALTY LLC,BELINDA GILLIS, 863 STERLING LLC,IVEY NORTH LLC,AYANNA BARTON, BATRA GROUP , INC.,JOHNATHAN CRUZ, 251 HIMROD LLC,OLAUSSON PARTRIDGE STEFFAN, REBEKAH GIBSON, MANHATTAN FLATS, YAEL DAVID, GUARDIAN REALTY GROUP, DANNY DOUMANIS, 25-41 12TH STREET LLC,MAYFLOWER REALTY AND ASSOCIATES, LINDA CHENG, EVA M. DANIELS REALTY, EVA DANIELS, CITI NEST GROUP LLC,MIKE ATIA, 123 PARK LLC,MAXIMILLION REALTY, INC.,BORIS BERYLAND, DAVID REYTBLAT, RICHARD CUFFARO, EDWARD ROZENTHAL, NIINA POOLE, PAUL NYLAND

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 017) 304, 305, 306, 307, 308, 309, 310, 350, 351, 352, 353, 354, 355, 356, 357, 358, 401

were read on this motion to/for DISMISS.

Upon the foregoing documents, Defendants Remax Edge ("Remax") and Elena Leal ("Leal") (collectively "Moving Defendants") motion to dismiss pursuant to CPLR §§ (a)(1), (a)(3), (a)(5) and (a)(7) is denied. Plaintiff Housing Rights Initiative's ("HRI" or "Plaintiff") motion to amend its complaint is granted.

I. Factual and Procedural Background

Plaintiff brought this action against real estate agents, brokerage firms, property management companies, and property owners, alleging intentional and willful source of income discrimination in violation of the New York City Human Rights Law ("NYCHRL") and New York State Human Rights Law ("NYSHRL") (NYSCEF Doc. 1). Plaintiff's Complaint was filed on May 25, 2022 (*id.*). It is alleged that Defendants have willfully and intentionally refused to rent apartments to individuals who intend to pay rent with CityFHEPS vouchers (*id.* at ¶¶ 4-5).

Plaintiff is a nonprofit housing group (*id.* at ¶ 9). Plaintiff alleges it has been injured by having to expend resources to investigate and respond to Defendants' discriminatory practices, which not only diverted Plaintiff's resources, but frustrated Plaintiff's mission (*id.*). Plaintiff

utilized testers whose investigations allegedly revealed source of income discrimination perpetuated by Defendants who refused to accept CityFHEPS vouchers for advertised apartments.

To qualify for a CityFHEPS voucher, a household must have a gross income at or below 200% of the federal poverty level. Further, the household must (a) include a veteran who is at risk of homelessness, or (b) the New York City Department of Social Services must determine that a CityFHEPS voucher is required to avoid shelter entry, or (c) the household must be facing eviction and includes someone who lived in a shelter and has an active adult protective services case, or (d) would otherwise be eligible for CityFHEPS if they were in a shelter (NYSCEF Doc. 49). As such, the CityFHEPS voucher is issued to some of New York City's most indigent and vulnerable citizens, helps prevent homelessness, and relieves New York City's overly burdened shelter system. Plaintiff alleges that in 2019, only 20% of New Yorkers with a CityFHEPS voucher were able to secure housing, and that one of the primary reasons for this low percentage is source of income discrimination (NYSCEF Doc. 1 at ¶ 94).

Plaintiff alleges that Defendants must comply with anti-discrimination laws under the NYSHRL and NYCHRL (*id.* at ¶ 95). Further, Plaintiff allege that the monthly rent charged by all named Defendants at each of the investigated properties did not exceed the CityFHEPS program's maximum allowable rent (*id.* at ¶ 96). Moreover, Plaintiff alleges that all Defendants, their employees, or their agents, told Plaintiff's testers that Defendants would not accept CityFHEPS as a source of payment for rent at the investigated properties (*id.* at ¶ 97).

As to Moving Defendants, it is alleged that Remax and its employee Leal were in the real estate business, including the brokering of apartments in New York City (*id.* at ¶ 21). It is further alleged that Defendant 9430 Ridge Owners Corp., ("Ridge Owners") who owned an apartment located at 9430 Ridge Boulevard #1D, Brooklyn, New York 11209 (the "Apartment") (*id.* at ¶ 22).

Plaintiff alleges Ridge Owners engaged Moving Defendants to list and rent the Apartment (*id.*). On December 1, 2021, it is alleged that one of Plaintiff's testers contacted Leal to see if the Apartment was available (*id.*). On December 2, 2021, the tester followed up and asked if a CityFHEPS voucher could be used, but Leal said the voucher would not work because the Apartment was in a co-op building (*id.*). It is alleged that Leal was working as an employee of Remax Edge, and both Moving Defendants were acting as agents of Defendant 9430 Ridge Owners Corp. during these interactions (*id.*).

Plaintiff filed another action with similar allegations against different defendants in New York County Supreme Court on June 30, 2021 (*see Housing Rights Initiative, Inc. v Century 21 Dawns Realty, et. al.*, Index No.: 156195/2021) (the "Century 21 case"). In that case, two defendants moved to dismiss the complaint. By order dated August 16, 2022 (the "Century 21 Decision"), a different judge dismissed the complaint against two of the defendants based on standing, although litigation continues against other defendants. On September 14, 2022, Plaintiff filed a motion to reargue that judge's decision. On November 9, 2022 the New York Attorney General filed an amicus brief in support of Plaintiff's motion to reargue.[1]

In the case at bar, Moving Defendants filed this pre-answer motion to dismiss on November 22, 2022 (NYSCEF Doc. 252). Moving Defendants believe that the Century 21 Decision collaterally estops this Court from finding Plaintiff has standing to bring this lawsuit (*see* NYSCEF Doc. 253). Moving Defendants argue that even if collateral estoppel does not apply, Plaintiff still lacks standing and has failed to state a claim (*id.*).

In response, on December 6, 2022, Plaintiff cross-moved to amend its Complaint to further specify the alleged injuries it has suffered as a result of Defendants' alleged discrimination

[1] The pending motion to reargue has not yet been decided.

(NYSCEF Doc. 350). Plaintiff also asserts that collateral estoppel does not apply since dismissal in the Century 21 case was based on standing. Plaintiff further asserts that since organizations like HRI have standing to bring claims based on testing under the Fair Housing Act, and since the NYCHRL and NYSHRL are meant to provide even broader remedial protection than their federal counterparts, then Plaintiff also has standing to bring claims of housing discrimination under both the NYCHRL and NYSHRL (NYSCEF Doc. 358). Plaintiff further argues that it has stated a cause of action under the NYCHRL and NYSHRL by alleging intentional and willful violations by Moving Defendants of applicable sections of the NYCHRL and NYSHRL. Moving Defendants opposed the cross-motion on December 12, 2022 (NYSCEF Doc. 401).

II. Discussion

A. Collateral Estoppel and CPLR § 3211(a)(5)

The Court will first assess whether collateral estoppel binds this Court to the Century 21 Decision. Collateral estoppel applies when "(1) the issues in both proceedings are identical, (2) the issue in the prior proceeding was actually litigated and decided, (3) there was a full and fair opportunity to litigate in the prior proceeding, and (4) the issue previously litigated was necessary to support a valid and final judgment on the merits" (*Conason v Megan Holding, LLC*, 25 NY3d 1 [2015] [internal quotation marks and citation omitted], *rearg denied* 25 NY3d 1193 [2015]). Collateral estoppel is an equitable doctrine, grounded in the facts and realities of a particular litigation, and is not to be applied rigidly. *Buechel v Bain*, 97 NY2d 295, 303 [2001]; *Tydings v Greenfield, Stein & Senior, LLP*, 43 AD3d 680, 684 [1st Dept 2007]; *Pustilnik v Battery Park City Authority*, 71 Misc.3d 1058, 1069 [Sup Ct, New York County 2021]).

It is well established that a dismissal premised on lack of standing is not a dismissal on the merits for the purposes of res judicata and collateral estoppel (*Landau v LaRossa, Mitchell & Ross*,

11 NY3d 8, 13 [2008] citing *Parker v Blauvelt Volunteer Fire Co.*, 93 NY2d 343 [1999]; *see also Favourite Limited v Cico*, 208 A.D.3d 99, 108 [1st Dept 2022] ["standing and capacity related dismissals are not on the merits"]; *Selene Finance, L.P. v Coleman*, 187 AD3d 1082 [2d Dept 2020]; *Wells Fargo Bank, N.A. v Ndiaye*, 146 AD3d 684 [1st Dept 2017]; *Tap Holdings, LLC v Orix Finance Corp.*, 109 AD3d 167 [1st Dept 2013]).

Because the Century 21 Decision on standing was not a final judgment on the merits, collateral estoppel does not apply (*see Conason v Megan Holding, LLC*, 25 NY3d 1, 18 [2015] [finding that collateral estoppel cannot apply where four elements laid out by Court of Appeals were not met]; *see also Zimmerman v Tower Ins. Co. of New York*, 13 AD3d 137, 139 [1st Dept 2004] ["Collateral estoppel is a component of the broader concept of res judicata, wherein the parties to a litigation and those in privity with them are conclusively bound **by a judgment on the merits**...] [emphasis added]).

Further, the Complaint in this action is over 30 pages longer, contains a new cause of action under the NYCHRL, and is replete with far more detailed allegations of injuries than the Complaint in the Century 21 Action. Thus, the motion to dismiss based on CPLR § 3211(a)(5) is denied.

B. Standing and CPLR § 3211(a)(3)

Although this Court is not collaterally estopped by the Century 21 Decision, as standing is another threshold Plaintiff must surmount, this Court will conduct a CPLR § 3211(a)(3) analysis. On a motion to dismiss based on standing the burden is on the moving party to demonstrate that a plaintiff lacks standing. However, to defeat a CPLR §3211(a)(3) motion, the plaintiff merely needs to raise a triable issue of fact as to whether standing exists (*DLJ Mortgage Capital v Mahadeo*, 166 AD3d 512, 513 [1st Dept 2018] citing *Deutsche Bank Natl. Trust Co. Ams. v Vitellas,* 131 AD3d 52, 59-60 [2d Dept 2015]).

The Court disagrees with Moving Defendants and finds they have not met their burden on this motion. Specifically, Plaintiff alleges that "When HRI finds discrimination, it diverts resources to address the problem through education and outreach, advocacy, training, collaboration and, if necessary, enforcement." (NYSCEF Doc. 1 at ¶ 160). Plaintiff listed particularized measures it had to take resulting in a diversion of resources, including (1) providing educational materials to schools, churches, and other local partners concerning the responsibilities of landlords and brokers related to source of income discrimination; (2) publishing website content for HRI's website about source of income discrimination in New York; (3) outreach to elected officials and government agencies to discuss HRI's alleged findings; (4) outreach directly to Defendants themselves, and (5) publishing advertisements about source of income discrimination and rights of tenants (*id.* at ¶ 161). Plaintiff alleges this diversion of resources reduced HRI's ability to further its advocacy related to rent stabilization laws and tax benefit programs (*id.* at ¶ 162). HRI alleges that if this alleged discrimination remains unabated, it will have to continue to divert resources to the detriment of other advocacy work (*id.* at 163).

Plaintiff also submits a proposed amended complaint which provides other particularized injuries (NYSCEF Doc. 358). Plaintiff alleges that Defendants' discrimination led to a reduction in available safe and affordable housing which led to increased demand and need for HRI's organizing, counseling and referral services (*id.* at ¶ 177). Plaintiff also alleges it had to divert resources away from investigating fraudulent rent overcharge cases (*id.* at ¶ 179). Plaintiff quantified its injuries by alleging it was compelled to divert hundreds of hours of time to investigate, educate, and conduct outreach to address source of income discrimination (*id.* at ¶¶ 166-167).

Plaintiff also provided guidance from the New York State Division of Human Rights ("NYSDHR") which expressly states that housing advocacy organizations, such as Plaintiff, "can file a complaint about any discriminatory policy or practice of a housing provider...which is revealed by responses of a housing provider to inquiries by the agency or its testers, or by other investigative means" (NYSCEF Doc. 342). The guidance cites a variety of cases which recognize organizational standing to seek injunctive and monetary relief based on discriminatory statements made to testers, even if the plaintiff could not show actual harm had occurred to individuals (*Fair Housing Justice Center, Inc. v Allure Rehabilitation Services LLC*, 2017 WL 4297237 [EDNY 2017]; *Olsen v Stark Homes, Inc.* 759 F.3d 140 [2d Cir. 2014]; *Sherwood Terrace Apartments v NY State Div. of Human Rights,* 61 AD3d 1333 [4th Dept 2009]). As recently held by the Court of Appeals: "courts must defer to an administrative agency's rational interpretation of its own regulations in its area of expertise." (*Andreyeva v New York Health Care, Inc.*, 33 NY3d 152, 174 [2019]). To the extent NYSDHR interprets the NYSHRL to confer standing upon organizations like Plaintiff, this Court must defer to NYSDHR's interpretation (*see also Chen v Romona Keveza Collection LLC*, 208 AD3d 152, 159-160 [1st Dept 2022]).

Plaintiff also asserts that the proper statutory construction of the NYCHRL and NYSHRL requires a finding of standing. Indeed, New York Local Law 35 § 1 expressly instructs courts to interpret the NYCHRL liberally and independently of state and federal anti-discrimination laws in order to create an independent body of jurisprudence for the NYCHRL that is maximally protective of civil rights in all circumstances. The First Department has likewise held that the NYSHRL and NYCHRL expands upon the rights enacted by federal legislation (*Phillips v City of New York*, 66 AD3d 170, 187 [1st Dept 2009] ["Congress expects federal enactments to serve as a floor of rights below which states and localities may not fall, not a ceiling above which states and localities may

not rise."]). The United States Supreme Court and Second Circuit have found that organizations such as Plaintiff have standing to bring enforcement actions under the Fair Housing Act based on alleged discrimination uncovered through the use of testers (*Havens Realty Corp. v Coleman*, 455 U.S. 363 [1982]; *see also Nnebe v Daus*, 644 F.3d 147, 157 [2d Cir. 2011] ["only a 'perceptible impairment' of an organization's activities is necessary for there to be an 'injury in fact.'"]; *CNY Fair Housing Inv. V Swiss Village, LLC*, 2022 WL 2643573 [NDNY 2022]).

Where a party shows an injury "that falls within the 'zone of interests,' or concerns, which sought to be promoted or protected by [a] statutory provision" the Court of Appeals has found standing requirements to have been met (*US Bank N.A. v Nelson*, 36 NY3d 998, 1003 [2020] [Wilson, J., concurring] quoting *Society of Plastics Indus., Inc. v County of Suffolk,* 77 NY2d 761, 773 [1991]). Accepting the allegations as true and construing the NYSHRL and NYCHRL more broadly than their federal counterpart, Plaintiff has sufficiently alleged an injury that falls within the "zone of interests" meant to be promoted and protected by the NYSHRL and NYCHRL.

Based on precedent and the statutory mandate that the NYCHRL and NYSHRL have a broader remedial reach than the Fair Housing Act, and organizational standing based on diversion of resources is recognized under the Fair Housing Act, then organizational standing in cases of housing discrimination under the NYCHRL and NYSHRL must exist.

To the extent Moving Defendants may dispute whether the diversion of resources was "sufficient" to confer standing upon Plaintiff, that constitutes a triable issue of fact warranting denial of a CPLR § 3211(a)(3) pre-answer motion to dismiss (*Chen v Romona Keveza Collection LLC*, 208 AD3d 152, 160 [1st Dept 2022] [holding where it is unclear from the record if standing exists, dismissal is improper]). Indeed, it would be a curious occurrence if Plaintiff had standing to bring these actions in Federal Court but not in State Court (*see Housing Rights Initiative v.*

Compass, Inc., 2023 WL 1993696 [SDNY 2023]; *Fair Housing Justice Center, Inc. v 203 Jay St. Associates, LLC*, 2022 WL 3100557 [EDNY 2022]; *CNY Fair Housing Inc. v Swiss Village, LLC*, 2022 WL 2643573 [NDNY 2022]; *see also Fair Housing Justice Center, Inc. v Edgewater Park Owners Cooperative, Inc.* 2012 WL 762323 [SDNY 2012] [finding organizational standing for claims asserted under FHA, NYSHRL, and NYCHRL based on housing discrimination uncovered by testers]).

Finally, the First Department has recognized the type of organizational standing that Plaintiff seeks to assert (*Mixon v Grinker*, 157 AD2d 423 [1st Dept 1990]; *Grant v Cuomo*, 130 AD2d 154 [1st Dept 1987]). Indeed, the First Department explicitly stated "we cannot ignore the obvious fact that if organizations of this kind are denied standing, the practical effect would be to exempt from judicial review the failure of the defendants to comply with their statutory obligations" (*Grant supra,* at 159). In *Grant*, the organizational plaintiff alleged statutory violations of the rights of suspected child abuse victims, while in *Mixon* the organizational plaintiff alleged violations of the rights of homeless men living with HIV/AIDS.

In the case at bar, the Plaintiff seeks to hold accountable alleged statutory violations discriminating against CityFHEPS voucher holders. The reality is that CityFHEPS voucher holders are homeless veterans, young LGBTQ+ individuals who have been kicked out of their homes, or indigent families living in crowded shelters. CityFHEPS voucher holders are akin to the vulnerable groups advocated for in *Grant* and *Mixon*. When it comes to asserting rights on behalf of these often marginalized and silenced communities in the housing or civil rights context, the First Department has made narrow exceptions related to standing for plaintiffs such as the one in the case at bar. Therefore, the CPLR § 3211(a)(3) motion is denied.

A. Failure to State a Claim and CPLR § 3211(a)(7)

Moving Defendants assert that Plaintiff failed to state a claim under the NYCHRL and NYSHRL. When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determine only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]).

Plaintiff alleges that it fits the statutory definition of a "person" under N.Y. Exec Law §292(1) (NYSCEF Doc. 1 at ¶ 169). Moreover, N.Y. Exec. Law §296(5)(a)(1)(a) makes it unlawful for housing owners and agents to make statements expressing limitations or discrimination based on a prospective tenant's lawful source of income. N.Y. Exec. Law §296(5)(c)(1) imposes the same regulations "for any real estate broker, real estate salesperson or employee or agent thereof." Accepting the allegations as true, it is alleged that Leal, who was working as an employee or agent of Remax, told Plaintiff's tester that an apartment was available, but when asked if a voucher could be used, while acting as an agent of Remax and the apartment owner, stated vouchers would not work (*Id.* at ¶ 124).

Although Defendants are correct that Plaintiff did not expressly plead that the tester was "qualified" to use a voucher, this argument rests on the incorrect assumption that it is the testers who are asserting claims against Moving Defendants or that Plaintiff is asserting claims on behalf of the testers. Rather, Plaintiff is alleging that Defendants have willfully and intentionally violated N.Y. Exec. Law §§ 296(5)(a)(3), 296(5)(c), and 296(6), and that these willful and intentional violations have caused Plaintiff to suffer injury (*id.* at ¶¶ 169-177). The source of the alleged injuries which Plaintiff is purportedly suffering was merely uncovered by the testers, and therefore

it is of no import whether the testers actually qualified for a CityFHEPS voucher. Indeed, alleged willful and intentional violations of the NYCHRL and NYSHRL brought by housing advocacy non-profits uncovered through testers have survived motions to dismiss under a more stringent FRCP 12(b)(6) standard (*See Fair Housing Justice Center, Inc. v JDS Development* LLC, 443 F.Supp.3d 494 [SDNY 2020]; *Fair Housing Justice Center, Inc. v Silver Beach Gardens Corp.*, 2010 WL 3341907 at *6 [SDNY 2010]).

Moreover, Plaintiff's use of fictitious applicants is no bar to Plaintiff's claims because Defendants' complete refusal to deal with any applicants using a CityFHEPS voucher removes the need for Plaintiff to plead specific violations (*CNY Fair Housing, Inc. v Swiss Village, LLC*, 2022 WL 2643573 [NDNY 2022]). It would be an anomaly and encourage forum shopping if an organizational plaintiff's claims of intentional violations of the NYSHRL and NYCHRL brought in Federal Court would survive under a more stringent pleading standard while being dismissed under the laxer pleading standard in New York State Court.

Further, although Moving Defendants argue the Complaint fails to allege actions that give rise to an inference of discrimination, the Court disagrees. On a motion to dismiss pursuant to CPLR § 3211(a)(7), the Court is required to give Plaintiff the benefit of all favorable inferences which may be drawn from the allegations (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). Since the tester was told the Apartment was available but a CityFHEPS voucher could not be used, the Plaintiff is entitled on this motion to an inference of source of income discrimination emanating from the alleged discriminatory statement. Indeed, Moving Defendants have not produced any documentary evidence that would rebut this inference which, procedurally, the Plaintiff is entitled.

A similar analysis applies to the NYCHRL, which Courts are instructed to interpret independently of state and federal anti-discrimination laws to create an independent body of jurisprudence that is maximally protective of civil rights (*See* New York Local Law 35 § 1). Plaintiff alleges it is an "aggrieved person" under N.Y.C. Admin. Code §8-502(A). Further, Plaintiff alleges that the Defendants, who are owners, real estate brokers, and/or real estate sales people are "persons" and "covered entities" under N.Y.C. Admin. Code §8-107. Further, N.Y.C. Admin. Code § 8-107(5)(c) makes it an "unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof, to refuse to sell, rent, lease any housing accommodation….to any person or group of persons…because of any lawful source of income of such persons." N.Y.C. Admin. Code § 8-107(6) makes it "unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden [by Section 8-107(5)], or to attempt to do so." Accepting the allegations as true, Plaintiff has stated a claim, for purposes of surviving a pre-answer motion to dismiss, against Moving Defendants for intentional and willful violation of N.Y.C. Admin. Code §§ 8-107(5)(a) and (c). Therefore, Moving Defendants' motion to dismiss pursuant to CPLR § 3211(a)(7) is denied.

D. Plaintiff's Cross Motion to Amend the Complaint

Plaintiff's cross-motion is granted. Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinksy v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or the amendments are patently devoid of merit (*Greenburgh Eleven Union Free School Dist. V National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]).

As previously stated, Plaintiff's pleadings are not patently devoid of merit. Moreover, since Plaintiff is simply further specifying their alleged injuries, the Court does not see how the Defendants could be prejudiced by the proposed amendments.

Accordingly, it is hereby,

ORDERED that Moving Defendants motion to dismiss is denied; and it is further

ORDERED that Plaintiff Housing Rights Initiative's cross-motion to amend its Complaint is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Moving Defendants shall serve an Answer to the Amended Complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that within 10 days of entry, Plaintiff Housing Rights Initiative shall serve with notice of entry a copy of this Decision and Order on all parties to this action; and it is further

ORDERED that all parties are directed to appear for an in-person preliminary conference on May 25, 2023 at 9:30 a.m. to enter into a discovery schedule. If the parties are able to agree to a discovery schedule on their own before the preliminary conference date, they may submit a proposed preliminary conference order via e-mail to SFC-Part33-Clerk@nycourts.gov.

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

5/4/2023
DATE

Mary V Rosado JSC
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	[ ] CASE DISPOSED		[X] NON-FINAL DISPOSITION			
APPLICATION:	[ ] GRANTED	[ ] DENIED	[x] GRANTED IN PART		[ ] OTHER	
	[ ] SETTLE ORDER		[ ] SUBMIT ORDER			
CHECK IF APPROPRIATE:	[ ] INCLUDES TRANSFER/REASSIGN		[ ] FIDUCIARY APPOINTMENT		[ ] REFERENCE	