

Testimony of Dana Sussman
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New York City Commission on Human Rights
Before the Committee on Civil and Human Rights
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Good afternoon Chair Eugene, and the members of the Civil Rights and Human Rights Committee. I am Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy at the Commission on Human Rights. I am pleased to be here to testify on the Commission's testing and investigatory work in the context of Commission-initiated investigations and enforcement actions.

The Commission has the power to initiate its own investigations and resulting enforcement actions when entities are suspected of maintaining or engaging in discriminatory policies or practices. In addition to filing complaints and testing, both of which are further described below, the Commission sends cease-and-desist letters and also uses a range of investigative methods, such as requests for information on policies and practices, demands for documents, and interviews of key witnesses. Cease-and-desist letters are a relatively new tool the Commission has been deploying with great success. The letters notify the wrong-doer that the actions taken may be a violation of the New York City Human Rights Law, demand the discriminatory actions cease, and demand that specific actions be taken, including, for example, restoring a victim of discrimination to the status they were in before the discriminatory action.

As you might recall, the Council passed several bills in 2015 on testing. Local Law 32 of 2015 mandated that the Commission undertake five tests in housing between October 2015 and March 2017 and submit a report to the Speaker of the City Council by March 1, 2017; Local Law 33 of 2015 similarly mandated that the Commission undertake five tests in employment between October 2015 and March 2017 and submit a report to the Speaker of the City Council by March 1, 2017; and Local Law 29 of 2015 changed the Commission's reporting requirements to mandate that the Commission include the following information in its annual reports: inquiries received by the Commission from the public, investigations initiated by the Commission, complaints filed with the Commission, and education and outreach efforts made by the Commission. As you'll see from my testimony, while the laws mandating 10 total tests per year expired in 2016, the Commission is far exceeding this minimum requirement.

In the four years since Commissioner Malalis began her tenure, the Commission has greatly expanded both its testing and Commission-initiated work, strengthening its investigatory toolkit in an effort to target systemic discrimination. Commissioner Malalis created an Assistant Commissioner position, who reports to the Deputy Commissioner for Law Enforcement, to oversee and coordinate the agency's testing work and its Commission-initiated investigations. For the past three-plus years, that position has been held by Assistant Commissioner Sapna V. Raj, a former Assistant U.S. Attorney and former Head of the Memphis Fair Housing Center. The Bureau uses its ability to initiate its own investigations in several different contexts. The Bureau may become aware of alleged unlawful discriminatory practices, through an anonymous tip, information shared by a community-based organization, an elected official, through social

media, or media reports, for example. A complainant may also come forward to file a complaint about discrimination and the Bureau may join and file a Commission-initiated case to broaden the scope of the investigation and, in some cases, continue the case to ensure wide-ranging policy changes, monitoring, and other affirmative relief, even if a complainant settles their individual matter separately.

In Fiscal Year 2018, Commission-initiated investigations covered 25 different protected categories. To highlight a few key areas, the Commission:

- Launched investigations into the policies and practices of employers where repeat instances of sexual harassment came to the Commission’s attention.
- Opened investigations to address pregnancy discrimination in employment and ensure lactation space for employees.
- Continued expansive testing of employment agencies to identify discrimination against job applicants based on criminal history.
- Investigated the accessibility of several mammography centers.
- Regularly intervened on an expedited basis to stop landlords from intimidating tenants because of actual or perceived immigration status.

The agency launched 583 Commission-initiated investigations in Fiscal Year 2018, including testing, a significant increase over 450 such investigations in calendar year 2017, and 426 in calendar year 2016.

The chart below provides a breakdown of the Commission-initiated investigations (which includes testing-based investigations) according to the area of jurisdiction and protected class of the alleged violations. Most investigations involve more than one protected class, and several involve claims under more than one jurisdiction.

COMMISSION-INITIATED INVESTIGATIONS BY JURISDICTION				
Discriminatory Harassment 4	Employment 325	Housing 178	Public Accommodations 84	Violation of a Conciliation Agreement 1

Testing

The Commission uses testing as an investigative tool to confirm whether there is discrimination in housing, employment, or public accommodations. As part of an investigation, the agency may send testers to potential employers, landlords/real estate brokers, restaurants, hospitals, stores, or other public accommodations to see if our testers are treated differently or are given different information because they belong to a protected class. This is an historically effective tool used in civil rights litigation. In Fiscal Year 2018, Commission testers tested 691 entities, an increase over calendar year 2017 in which the testers performed tests on 577 entities, and over 2016, when the Commission performed 426 tests. The 2017 and 2018 numbers reveal a significant jump over 2016 and before that, 2015, because the 2017 and 2018 numbers reflect entities tested, which may involve multiple tests, rather than each test.

TESTS IN EMPLOYMENT - 315	
Protected Class	Number of Entities Tested
Conviction and/or Arrest Record	288 (150 also tested for Salary History) ¹
Pregnancy	10
Race	15
Gender	2

TESTS IN HOUSING - 290	
Protected Class	Number of Entities Tested
Lawful Source of Income	222
Race	36
Disability (Emotional Support Animal)	10
Immigration Status	19
Presence of Children	3

TESTS IN PUBLIC ACCOMMODATIONS - 86	
Protected Class	Number of Entities Tested
Disability Access	85
Creed	1

Commission-Initiated Complaints

Some Commission-initiated investigations lead to the filing of a Commission-initiated complaint alleging a pattern or practice violation. In Fiscal Year 2018, we filed 44 Commission-initiated complaints, an increase over 37 in calendar year 2017.

The chart below lists the number of Commission-initiated complaints according to the jurisdiction and protected class of the alleged violation.

¹ Since October 31, 2017, the effective date of the City Human Rights Law's prohibition on salary history inquiries in employment, the Law Enforcement Bureau has tested for questions related to salary history, conviction, and arrest record in the same test because all three areas involve reviewing job applications for illegal inquiries.

Most complaints allege more than one protected class. For example, the Commission filed 30 Commission-initiated complaints to address illegal employment practices that discriminate on the basis of arrest and conviction record and which also have a disparate impact on Black and Latinx employees; these complaints allege violations under four protected classes: arrest record, conviction record, race, and national origin.

JURISDICTION	
Employment	33
Housing	8
Public Accommodations	2
Violation of a Conciliation Agreement	1
Grand Total	44

PROTECTED CLASS					
Employment		Housing		Public Accommodations	
Arrest Record	32	Alienage Status	2	Disability	1
Conviction Record	32	Citizenship Status	2	Gender	1
Credit History	1	Disability	1		
Disability	2	Lawful Source of Income	4		
Gender	1	National Origin	3		
National Origin	30	Race	2		
Race	30	Retaliation	1		
Salary History	2				

Outcomes

The Commission is often able to resolve Commission-initiated cases even before a complaint is filed, through its use of pre-complaint investigatory strategies and cease-and-desist letters. Since 2017, the Commission has resolved approximately 65 Commission-initiated cases without having to file a complaint. These cases involve some combination of policy changes, training for staff and management, civil penalties, posting requirements, or other forms of affirmative relief.

Since 2017, LEB has resolved approximately 55 Commission-initiated cases where LEB filed a complaint. These cases involve some combination of policy changes, training for staff and management, civil penalties, posting requirements, or other forms of affirmative relief.

Case summaries

The Commission has been able to use its affirmative investigatory powers to garner significant and wide-ranging relief in many cases. I have included a few summaries below.

In a landmark case, the Commission announced late last year that it resolved a Commission-initiated investigation against PRC Management, LLC, a housing management company controlling 100 buildings with 5,000 units citywide, charged with discriminating against prospective tenants based on their race, color, and national origin for denying housing to applicants with criminal histories without performing individualized analysis of those records. The Commission required PRC Management, LLC to pay \$55,000 in emotional distress damages to a victim impacted in this case, \$25,000 in civil penalties, change and distribute new screening and application policies, train staff on the new policy and law, and invite applicants with criminal histories who were previously denied housing to reapply. PRC Management, LLC fully cooperated with the Commission's investigation. This is the first case of its kind that we are aware of, in which a civil rights agency successfully brought a case based on a policy of screening out prospective tenants based on their criminal history having a disparate impact on people of color.

Last year, the Commission announced a settlement with Lenox Hill Radiology following an investigation into allegations of discrimination for failure to accommodate patients with disabilities. As part of the settlement agreement, the Commission is requiring Lenox Hill Radiology to modify the front and interior of a building to make it accessible to people with disabilities; provide equipment in line with the U.S. Access Board's accessibility standards to ensure that mammography machines are accessible; change internal scheduling, communications, and equipment purchasing policies citywide; and train staff at all its New York City locations to better accommodate patients with disabilities. The Commission initiated an investigation into Lenox Hill Radiology after it received a letter from New York Lawyers for the Public Interest identifying accessibility issues. The Commission then tested and visited the facility and verified the claims. Lenox Hill Radiology, which fully cooperated with the Commission's investigation and settlement process, is currently making the agreed upon changes and the Commission is working to ensure that other Lenox Hill Radiology facilities in New York City are accessible to people with disabilities.

Also in 2018, the Commission announced a settlement with the Condominium Board of Managers at 47-55 39th Place in Sunnyside, Queens following an investigation into reports of tenant harassment, discrimination, and a hostile environment, including displays of Nazi and Confederate imagery, swastikas, and hate symbols in the lobby. The Commission launched the investigation on behalf of the City in August 2017 immediately after it learned of possible violations of the City Human Rights Law in the building from Council Member Jimmy Van Bramer, tenants, and condo owners. The settlement requires the resignation of three board members, removal of all offensive posters, symbols, and materials from the lobby, and changes to the Condominium's "House Rules" to comply with the City Human Rights Law, including the removal of a provision requiring tenants to prove their immigration status and amending its "no pets" policy to include language about accommodating tenants with disabilities. The settlement

also requires the new Board of Managers to create and distribute new written policies detailing its housing obligations under the City Human Rights Law to all unit owners and tenants, post notices of rights prominently in the lobby, and train newly elected board members on the Law. The settlement also allows the Commission to be present at Board of Manager's annual meetings and elections to ensure compliance with the settlement and the City Human Rights Law and requires the new board to notify the Commission of annual meetings for the next two years.

In December 2018, following reports of displays featuring racist iconography in Prada stores, as well as an employee facing retaliation for lodging a complaint regarding the display, the Commission launched an investigation and sent a cease-and-desist letter to Prada USA Corp. The letter demanded that the company immediately stop displaying and selling the "Pradamalia" goods, retaliating against any employees for opposing the offensive and illegal material, and commit to providing City Human Rights Law training for all Prada employees, executives, and independent contractors. Prada has pulled the product line and displays from stores, but the Commission will continue its investigation and negotiation process to ensure broad remedial action.

Finally, the Law Enforcement Bureau, through a Commission-initiated investigation, found evidence that Promesa Residential Health Care Facility, The Puerto Rican Organization To Motivate, Enlighten, and Serve Addicts, Inc., Promesa Residential Health Care Facility, Inc., and Acacia Network, Inc. (Respondents) maintained policies and practices that resulted in blatant discrimination against transgender people and filed Commission-initiated complaint. Respondents' personnel told Commission testers that transgender women would be required to room with men. In one test, Respondents' staff told a tester that transgender women would be turned away entirely unless a private room was available and LEB later learned the facility in question had only one private room. The Commission and Respondents entered into a conciliation agreement for \$10,000 in civil penalties as well as affirmative relief. Respondents agreed to implement policies that clearly prohibit gender-based discrimination and harassment, including by permitting transgender people to participate in all aspects of their services in a manner consistent with their gender identity, including room assignments and other gender specific programs and facilities. Respondents also agreed to notify organizations that help LGBTQ people connect with substance abuse treatment of their updated policies and organizations that assist LGBTQ job seekers of Respondents external job postings. Lastly, Respondents agreed to conduct ongoing anti-discrimination training and to monitoring by the Commission.

Thank you for convening the hearing today on this important topic and the Commission's critical work in combatting discrimination and harassment through Commission-initiated investigations and testing. I look forward to your questions.

FY 2018 COMMISSION-INITIATED INVESTIGATIONS BY PROTECTED CLASS²							
Discriminatory Harassment		Employment		Housing		Public Accommodations	
Color	1	Age	3	Age	2	Age	1
Creed	1	Arrest Record	272	Alienage Status	19	Alienage Status	3
Gender	1	Citizenship Status	4	Citizenship Status	6	Citizenship Status	1
Interference with Protected Rights	1	Conviction Record	275	Creed	1	Creed	1
National Origin	1	Credit History	37	Disability	32	Disability	60
Sexual Orientation	1	Creed	2	Gender	4	Domestic Partnership Status	1
		Disability	11	Lawful Occupation	1	Gender	19
		Gender	20	Lawful Source of Income	185	Marital Status	1
		National Origin	71	Marital Status	2	National Origin	7
		Pregnancy	12	National Origin	12	Race	7
		Race	75	Presence of Children	2	Sexual Orientation	6
		Retaliation	2	Race	25		
		Salary History	50	Retaliation	2		
		Sexual Orientation	2				
		Unemployment Status	1				
		Victims of Domestic Violence	2				

² In addition, the Commission initiated and filed one case pursuant to N.Y. Admin. Code §8-107(8) for violation of a Commission-ordered conciliation agreement.