

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 morning Chair Eugene and committee members. I am Dana Sussman, Deputy Commissioner for Intergovernmental Affairs and Policy, at the Commission on Human Rights. Thank you for convening today's hearing on Intros. 85 and 1603, two important bills in the City's effort to address housing discrimination and access to housing. The Commission's efforts to combat housing discrimination are more robust than ever. In January 2018, the Commission established its source of income unit, a small, dedicated unit of staff specifically focused on both immediate interventions and larger-scale systemic prosecutions to combat source of income discrimination, in which individuals with housing vouchers, including Section 8, City FEPS, HASA or other forms of rental subsidies, are turned away by landlords who refuse to accept them, which has been a violation of the City Human Rights Law since 2008. Since the inception of the Source of Income Unit, the unit has resolved 236 cases through pre-complaint intervention, securing housing for housing insecure or homeless New Yorkers after being turned away by a housing provider because of their voucher; allowing a tenant to remain in their home through the use of a voucher; getting a voucher restored or extended; or delaying or preventing an eviction. In addition to responding immediately to critically urgent cases, the unit also files complaints against housing providers where appropriate, particularly where pre-complaint intervention does not resolve the matter, where a housing provider has repeatedly violated the law, or where a systemic pattern-or-practice issue is identified.

The Commission resolved a case earlier this year that is demonstrative of its comprehensive efforts to combat source of income discrimination. The case involved a prospective tenant who alleged that Respondent, the owner of three buildings containing affordable units, refused to accept Complainant's SEPS Voucher and denied her housing application. After the complaint was filed, Respondent promptly expressed a desire to resolve the case and cooperated fully in the Commission's investigation. The Commission's investigation revealed that Respondent had an unlawful policy of refusing to accept SEPS Vouchers, and that at least two individuals, including Complainant, had been denied pursuant to that policy. The Commission, Complainant, and Respondent entered into a conciliation agreement requiring Respondent to pay emotional distress and damages to Complainant for loss of housing opportunity and civil penalties to the general fund of the City of New York. Respondent also agreed to adopt policies not only with respect to accepting vouchers but also regarding tenant screening, reasonable accommodations, and the use of criminal history information in making housing decisions, to train all employees with managerial authority or with job duties related to reviewing applications, and to post the Commission's Fair Housing poster in all buildings in New York City.

In addition to the Commission's targeted efforts to combat source of income discrimination, the Commission's work to address housing discrimination across all protected categories, including race, immigration status, national origin, disability, and others, involve several creative strategies. The Commission's Project Equal Access continues to advocate for accommodations for people with disabilities in housing through its pre-complaint resolution efforts, achieving 174 such resolutions in Fiscal Year 2019, up significantly from Fiscal Year 2018. Project Equal Access remains a key program of the Commission in its focus on resolving matters for members of the public expeditiously and without litigation where appropriate. Project Equal

Access deploys specialized staff at the Commission to work directly with landlords and other housing providers to create physical modifications and other accommodations to allow people with disabilities to remain in their homes, improve access to common spaces and entrances/exits, and ensure that people can live with their service animals or emotional support animals.

In Fiscal Year 2019, the Commission resolved a groundbreaking, first of its kind case against a large landlord based on its use of criminal history to screen out applicants, using the legal theory – relying on 2016 HUD guidance and national statistics – that such a policy has a disproportionate impact on Black and Latinx prospective tenants. In another groundbreaking resolution, the Commission, earlier this year, resolved a case involving a large housing provider that failed to reasonably accommodate a tenant’s use of a wheelchair by refusing his repeated requests over several years to widen a bathroom door and install a roll-in shower in his apartment, and to make the building’s entrance accessible. After the Law Enforcement Bureau investigated and issued a probable cause determination, the parties entered into a conciliation agreement requiring the housing provider to revise its anti-discrimination policies; create a website—the first of its kind as part of a conciliation agreement with the Commission—that is specifically designed to be accessible to individuals with disabilities and includes information about requesting reasonable accommodations; conduct anti-discrimination training for all employees; display the Commission’s postings; and pay Complainant \$160,000 in emotional distress damages, the highest emotional distress damages award to date in a housing action. As further relief negotiated under the settlement, the housing provider installed automated entrance and mailroom doors throughout the four buildings of the housing complex to make the entire complex physically accessible to individuals with mobility impairments.

Turning now to the proposed bills, Intro. 85 would make it a protected category under the New York City Human Rights Law to discriminate in housing based on a prospective or current tenant's inclusion on a "tenant blacklist," i.e. tenant screening lists that are used to identify supposedly risky renters by naming tenants who have been involved in a housing court case. The bill adds participating in a housing court proceeding to the list of protected categories in the housing discrimination section of the New York City Human Rights Law.

Since Intro. 85 was drafted and introduced, there have been legislative changes at the state level prohibiting the use of "tenant blacklists" as a screening tool for prospective tenants. Specifically, Real Property Law Section 227-f empowers the attorney general to civilly prosecute landlords who continue to use these lists. The Administration looks forward to working with the Council to consider ways that the City can strengthen these protections by considering the possibility of a private right of action under City law.

Intro. 1603 would make it an unlawful discriminatory practice to deny a rental or lease of a housing accommodation controlled or subsidized or both by HPD based on prohibited indicators of credit. As my colleague at HPD will explain in further detail, since this bill was introduced, HPD updated its marketing guidelines to allow an applicant the choice to avoid a credit check by providing evidence of 12 months' complete rent payments. In the Commission's experience, housing providers regularly use credit history as an arbitrary basis for rejecting qualified applicants who are demonstrably able to pay their rent on time. Some housing providers, for example, have rejected applicants based on their credit history, even where 100% of the rent will be covered by a housing voucher. The Commission prosecutes such cases as discrimination based on lawful source of income. However, we believe that additional protections along the lines of those proposed in Intro. 1603 can help to remove unnecessary impediments to housing in our city.

The Commission and HPD along with our partners in the Administration look forward to working with the Council on these critical issues to reduce barriers to stable and safe housing across New York City.