

Testimony of Dana Sussman
Deputy Commissioner for Policy and Intergovernmental Affairs
New York City Commission on Human Rights
Before the Committee on General Welfare and
Committee on Civil and Human Rights
September 15, 2020

Good morning Chair Levin, Chair Eugene, Public Advocate Williams, and members of the Committees on General Welfare and Civil and Human Rights. Thank you for convening today's hearing and for your commitment to improving access to affordable, fair housing in our city. I am Dana Sussman, Deputy Commissioner for Policy and Intergovernmental Affairs at the New York City Commission on Human Rights. I am joined today by my colleague, Senior Policy Counsel Zoey Chenitz. We will be testifying today in support of the pre-considered, unnumbered bill¹ that would expand source of income protections under the City Human Rights Law, and Intro. 2047, which would prohibit housing discrimination based on arrest or criminal record. My testimony will focus primarily on the proposed expansion of source-of-income protections, and the Commission's work in this area.

As you likely know, the Commission is the local civil rights enforcement agency that enforces the New York City Human Rights Law, one of the broadest and most protective anti-discrimination and anti-harassment laws in the country, now totaling 27 protected categories across nearly all aspects of city living: housing, employment, and public accommodations, in addition to discriminatory harassment and bias-based profiling by law enforcement. By statute, the Commission has two main functions. First, the Commission's Law Enforcement Bureau enforces the City Human Rights Law by investigating complaints of discrimination from the public, initiating its own investigations on behalf of the City, and utilizing its in-house testing program to help identify entities breaking the law. Second, through the Community Relations Bureau, which comprises Community Service Centers in each of the City's five boroughs, the Commission provides free workshops on individuals' rights and businesses, employers' and housing providers' obligations under the City Human Rights Law and creates engaging programming on human rights and civil rights issues. In the last five and a half years, since Commissioner and Chair Malalis began her tenure, the Commission has implemented 31 amendments to the City Human Rights Law, including the nation's broadest ban the box criminal history discrimination protections in employment, the nation's first salary history ban, expansions of protections and new requirements relating to sexual harassment and lactation accommodations, among many others.

The Commission's work has not paused because of the COVID-19 pandemic. To the contrary, our work has continued, expanded, and pivoted to address current challenges, including racial disparities in access to healthcare, housing, and essential needs; the needs of frontline workers who have disabilities or are pregnant and need accommodations to continue to do their jobs safely; and the rise in anti-Asian bias and discrimination. As we just announced yesterday, the

¹ Council file number T2019-405.

Commission has assessed a record \$7.5 million in damages and penalties for violations of the City Human Rights Law in Fiscal Year 2020. This represents a 550% increase in damages and penalties since Commissioner Malalis took over the agency in 2015. These figures exceed the damages and penalties in Fiscal Year 2019 by 18 percent and nearly double the damages and penalties compared to Fiscal Year 2018. Further, the Commission works to resolve cases not just for monetary relief in the form of damages and penalties, but has applied creative approaches informed by restorative justice offering to repair the harm experienced by both individuals and communities impacted by the discrimination. For example, the Commission has negotiated resolutions that require respondents to invest in paid internship, apprenticeship, or employment pipeline opportunities for underrepresented groups and to create new high-level positions to oversee such efforts; or to engage with community-based organizations to recruit workers or prospective tenants. And the Commission has maintained the cooperative approach to businesses and public accommodations it established five years ago; in many instances involving first-time violators of the City Human Rights Law where there is no complainant harmed by the violation, the Commission has sought to educate businesses about their legal obligations and work with them in creating non-discriminatory policies and practices, rather than levying bracing fines. Many small business owners and landlords themselves experience different forms of discrimination in other areas of their lives, and our approach in certain situations to educate rather than penalize had greater impact in furthering the understanding and adoption of human rights in the City.

While assessing a record level of damages and penalties, the Commission also closed a new high of 1,066 cases and reduced the average case processing time by 100 days, an incredibly challenging feat, especially under current circumstances and within a telework environment. The Commission's Law Enforcement Bureau filed 525 new cases in FY 2020 and completed 403 successful emergency interventions. The Commission settled 267 cases and completed 43 mediations, both representing increases from the prior fiscal year. These increases are a testament to the dedication of the Commission's staff who remained steadfast in their efforts to vindicate New Yorkers' human rights, though many of our staff lost parents, grandparents, and other family members in the last few months and/or were forced to contend with pandemic-related challenges for themselves and their families. The agency also received an increased number of reports of discrimination in FY 2020, from 9,804 in FY 2019 to 10,015 in FY 2020. Consistent with past years, the protected categories of disability, gender, and race were the top three most-reported areas of discrimination.

The Commission's Work on Source of Income Discrimination

Combatting discrimination based on lawful source of income has been a major priority for Commissioner Malalis from the very beginning of her tenure. In Commissioner Malalis's first year, the Commission quadrupled the number of investigations into lawful source of income housing discrimination, filing 90 cases—a 300% increase from the prior year's 22 cases. In 2016, the Commission issued its highest civil penalty in a source of income discrimination case in Commission history, fining Best Apartments Inc., a management company with control over more than 1,000 units throughout the City, \$100,000 for refusing to show a prospective tenant an apartment after he revealed he had a Section 8 voucher.

In January 2017, the Commission announced five Commission-initiated cases filed against large landlords and brokers that collectively control approximately 20,000 units for repeatedly discriminating against prospective tenants based on their use of housing vouchers, a violation of the NYC Human Rights Law. The complaints, which the Commission filed on behalf of the City, followed proactive Commission-led investigations developed from tips from prospective tenants as well as the Commission's testing program. The landlords and brokerage firms charged with discriminatory practices include Parkchester South Condominiums (Bronx), River Park Residences (Bronx), Goldfarb Properties (Manhattan, Bronx, Queens), Martini Properties (Bronx), and ABECO Management (Brooklyn).

Then, in 2018, the Commission announced the launch of a groundbreaking, dedicated source of income unit to provide rapid response advocacy and interventions for people experiencing discrimination while seeking housing using vouchers. The unit undertakes emergency interventions to stop discrimination in its tracks: our staff contacts the landlords or brokers who are in danger of violating our law directly to educate them and advocate for the rights of tenants. In the last two fiscal years, the unit has completed 400 emergency interventions on behalf of New Yorkers with housing vouchers, which includes getting them into housing they had been denied, along with filing nearly 150 cases and conducting testing and Commission-initiated investigations. Since 2014, the Commission has assessed over \$1.2 million in damages and penalties in source of income cases of which over \$450,000 were assessed in Fiscal Year 2020 alone.

The Commission's Law Enforcement Bureau has taken an expansive approach to address landlords' use of other requirements, like minimum income requirements and credit checks, to exclude voucher holders. In 2018, the Commission published materials that explicitly prohibit the use of credit checks when a voucher covers 100% of the rent. In addition, the Commission's materials also state that where the tenants' rental portion is calculated based on the tenants' income, it is a violation of the City Human Rights Law to impose any additional income requirements on applicants for housing. The Commission's materials, which include three separate documents with specific frequently asked questions targeted to landlords, brokers/agents, and voucher holders, are available in multiple languages on our website.

And earlier this year, based on a case the Commission initially brought, a New York State appeals court held that vouchers for security deposits are, as the Commission asserted, a lawful source of income, and landlords must accept them. The Commission brought the case in 2017 against the LeFrak Organization on behalf of a woman who was denied an apartment because she was seeking to use a security voucher to pay the security deposit. The Commission's case built on a Decision and Order issued by Commissioner Malalis earlier that year finding that the denial of a prospective tenant's security voucher was source of income discrimination. The appellate court decision ensures that security vouchers can continue to be administered by HRA and individuals who use them are protected under the City Human Rights Law.

In the last fiscal year, the Commission has pioneered a new requirement in source of income discrimination resolutions: mandating that landlords found to have violated the City Human Rights Law's source of income protections reserve, or "set aside," a specific number of units in their housing stock for voucher holders. This novel strategy applies the Commission's

commitment to restorative justice to source of income discrimination cases: not only does it repair the harm to the impacted complainant by ensuring they obtain housing along with damages, but it also creates a structural response to the broader crisis of access to housing for voucher holders, and reduces the likelihood of future tenants facing the same kind of discrimination. This new approach was just profiled in an article in The Gothamist last week.²

Selected Case Resolutions

- **June 2020:** Complainant, a Section 8 recipient, filed a complaint alleging that her landlord refused to allow her to begin using her Section 8 voucher after she became eligible for the voucher during her tenancy. The Commission's Law Enforcement Bureau investigation revealed that Respondents intentionally failed to process the legally required paperwork for Complainant's Section 8 voucher. After the Law Enforcement Bureau issued a probable cause finding, the parties entered into a conciliation agreement in which Respondent agreed to pay Complainant \$15,000 in emotional distress damages; waive over \$14,000 in rent arrears and other fees; train employees with job duties related to reviewing or evaluating rental applications on the NYC Human Rights Law and source of income discrimination; revise their tenant screening policies, and display the Commission's "Fair Housing, It's the Law" poster at any and all of the buildings in their portfolio.
- **February 2020:** A prospective tenant who received rental assistance through Section 8 filed a complaint alleging that a broker would not allow her to apply for an apartment because of her rental voucher. At the time, the complainant was a homeless mother. Respondents cooperated fully with the Commission's investigation. Complainant and Respondents entered into a conciliation agreement requiring Respondents to pay \$25,000 in emotional distress and lost housing opportunity damages to Complainant and \$15,000 in civil penalties. Respondents also updated their policies on source of income discrimination and agreed to attend an anti-discrimination training.
- **October 2019:** The Commission settled a case involving source of income discrimination by Michael Partridge Realty Corp., in which a frontline staffer of the realty company told a prospective tenant that vouchers were not accepted. The Commission negotiated \$5,000 in emotional distress damages to the victim and ordered anti-discrimination training for the Respondents and the creation of an anti-discrimination policy.
- **August 2019:** The Commission ordered a landlord with 15 buildings to pay \$20,000 in emotional distress damages and \$4,000 in civil penalties for refusing to accept a prospective tenant's Section 8 voucher. The tenant had lost her voucher as a result of the discrimination and had to seek alternative housing options. In addition to her voucher restoration, the landlord agreed to train all employees with job duties related to reviewing and accepting prospective tenants, and to post the Commission's Fair Housing poster in all their buildings in New York City.

² Sydney Pereira, The Gothamist, NYC Is Requiring Landlords Set Aside Apartments For Voucher Tenants Under New Approach To Enforcing Human Rights Law, September 11, 2020, <https://gothamist.com/news/nyc-requiring-landlords-set-aside-apartments-voucher-tenants-under-new-approach-enforcing-human-rights-law>.

Year	Inquiries	Complaints	Commission-Initiated Investigations	Successful Pre-Complaint Interventions
2015 (CY)	89	90	18	Not reported
2016 (CY)	375	129	Not reported	Not reported
2017 (CY)	356	85	177	12
2018 (FY)	328	98	185	30
2019 (FY)	485	99	222 (entities tested)	206
2020 (FY)	493	50	136 (entities tested)	179

The Commission’s Community Relations Bureau has also engaged in deep community outreach and engagement to educate New Yorkers on their rights to be free from discrimination based on lawful source of income. During Fair Housing Month each year, the Commission hosts a symposium, and over the past several years, source of income discrimination has been a key focus. We’ve built relationships with community-based organizations doing critical work on the ground, who make direct connections to our team, and help us spread the word about our work, including Neighbors Together, Housing Court Answers, Community Action for Safe Apartments, Legal Hand, Nazareth House, Part of the Solution, Asian Americans For Equality, St. Nicks Alliance Community Development Corporation, Northwest Bronx Community and Clergy Coalition, North Brooklyn Housing Task Force, and Met Council. In Fiscal Year 2020, the Commission conducted over 40 fair housing workshops, held seven on-site mobile housing rights clinics, and participated in over 50 additional fair housing-related events.

The Commission supports the proposal to reduce the current six-unit minimum for jurisdiction on source of income cases to three units, which will help ensure access for New Yorkers with vouchers to a broader range of affordable housing stock. As you may be aware, last year, New York State passed source of income discrimination protections state-wide that are broader than current protections under the City Human Rights Law, and we support more closely aligning the two statutes.

I will turn it over to my colleague, Zoey Chenitz, to discuss Intro. 2047. Thank you for the opportunity to speak today. The Commission believes that access for all New Yorkers to affordable housing, free from discrimination, is key to the City’s wellbeing and we look forward to working with you further on these bills.