

HOUSING DISCRIMINATION COMPLAINT

1. Complainant:

Westchester Residential Opportunities, Inc. (“WRO”)
470 Mamaroneck Avenue, Suite 410
White Plains, NY 10605

2. Complainant Representative:

Diane L Houk, Esq.
Emery Celli Brinckerhoff Abady Ward & Maazel, LLP
600 Fifth Ave, 10th Floor
New York, NY 10020

212-763-5035

dhok@ecbawm.com

3. Other Aggrieved Parties:

None.

4. The following is alleged to have occurred or is about to occur:

- Withholding the rental of a housing accommodation [Section 296(5)(a)(1)]
- Discriminatory terms and conditions of the rental of a housing accommodation [Section 296(5)(a)(2)]
- Printing or circulating, and causing to be printed or circulated statements for the rental of a housing accommodation which express, directly or indirectly, a limitation, specification or discrimination, or an intent to make any such limitation, specification or discrimination [Section 296(5)(a)(3)]

5. The alleged violation occurred because of:

- Source of Income

6. Address and location of the property in question:

The following apartment complexes:

1. Chelsea Ridge Apartments (835 units)
1 Chelsea Ridge Mall, Wappingers Falls, NY 12590 (Dutchess County)

2. Village Park Apartments (178 units)
5 Park Drive, Pleasant Valley, NY 12569 (Dutchess County)
3. Netherlands Village Apartments (132 units)
1455 Dorwaldt Blvd., Schenectady, NY 12308 (Schenectady County)
4. Glenmont Manor Apartments (46 units)
371 Route 9W, Glenmont, NY 12077 (Albany County)
5. Loudon Arms Apartments (319 units)
16B Old Hickory Drive, Albany, NY 12204-12077 (Albany County)
6. Maple Manor (40 units)
101 Cherry Avenue, Delmar, NY 12054 (Albany County)
7. Mill Creek Apartments (516 units)
16 Mill Creek Drive, East Greenbush, NY 12061 (Rensselaer County)

7. Respondents:

1. Dawn Homes Management LLC (rental management company)
20 Corporate Woods Blvd.
Albany, NY 12211
2. DHM Properties LLC (owner)
3425 Warners Road
Camillus, NY 13021

8. The following is a brief and concise statement of the facts regarding the alleged violation:

Westchester Residential Opportunities, Inc. (“WRO”) is a private non-profit organization serving New York counties north of New York City, including between Westchester County and the Albany region. WRO’s principal place of business is in White Plains, New York. WRO’s mission is to promote equal, affordable, and accessible housing opportunities for all residents of the region it serves. It accomplishes its mission through a variety of housing-related programs, including providing education about fair housing rights and responsibilities, conducting investigations of allegations of housing discrimination, and undertaking studies and issuing reports about fair housing.

WRO diverted its limited resources for its fair housing program to investigate and attempt to remedy the Respondents’ discriminatory policies and practices on the basis of source of income in violation of the New York State Human Rights Law. These

resources include staff time to coordinate and review testing of Respondents and to meet with WRO executive staff and legal counsel.

In addition to causing a diversion of WRO's resources, Respondents' policies and practices as described below have frustrated WRO's stated mission to provide equal, affordable, and accessible housing opportunities for all residents of the region by not renting apartments in an equal or non-discriminatory basis due to source of income.

Respondents operate rental complexes in New York (30 locations), Connecticut (1 location), and Massachusetts (5 locations), including the seven listed above. The seven locations in question include over 2000 rental units.

Prior to April 2019, when the New York State Human Rights Law was amended to include "lawful source of income" as a protected characteristic, WRO conducted telephone tests at two of Respondents' apartment complexes. The testers posed as prospective renters with a federally-funded rental subsidy only for low-income disabled individuals living with HIV/AIDS, known as HOPWA. The testers telephoned Respondent's agents at Chelsea Ridge Apartments and Village Park Apartments in Dutchess County and recorded each of their calls. During these contacts, Respondents' agents told WRO testers that Respondents:

- Did not accept any rental subsidies or vouchers
- Did not accept any programs because they were not set up to take them
- Only leased apartments to tenants who paid the rent directly to Respondents
- Did not accept rental payments directly from the government

Starting in August 2019 after the state Human Rights Law was amended, WRO conducted additional telephone testing of Respondents by contacting seven of Respondents' apartment complexes in New York. Between August 2019 and May 2021, WRO instructed testers to call Respondents' agents at Chelsea Ridge Apartments and Village Park Apartments in Dutchess County; Loudon Arms Apartments, Glenmont Apartments, and Maple Manor Apartments in Albany County; Netherlands Village Apartments in Schenectady County; and Mill Creek Apartments in Rensselaer County. The testers posed as prospective renters with either a Section 8 or HOPWA rental voucher or as someone calling on behalf of a family member with either a Section 8 or HOPWA rental voucher. Each telephone call was recorded. In some instances, Respondents' agents emailed the testers' information about Respondents' rental policies, including Respondents' minimum income requirement ("MIR").

During these tests, Respondents' agents provided a variety of responses to the testers' inquiries, including in some instances telling the tester that Respondents did not accept any rental vouchers. In other instances, Respondents' agents told testers that Respondents accepted rental vouchers, but imposed a minimum income requirement based on the full rent, even though for applicants with rental vouchers, most of the rent would be paid directly to Respondents by a publicly funded program. Some of the

Respondents' agents told testers that their rental vouchers would not be counted toward meeting the MIR. Other agents told testers the value of the rental voucher would be counted toward the MIR. But in either instance, Respondents set the MIR based on the full monthly rent for an apartment, even though renters with rental subsidies would only pay a portion of the full rent themselves (the remainder being paid directly by the voucher program). As recently as Spring 2021, Respondents continued to maintain an MIR that excludes virtually all applicants with a rental subsidy or voucher.

For example, if Respondents' monthly rent is \$1,100 and the renter has a voucher that pays \$740 of the rent and the renter pays \$360, Respondents would require the renter to make 3x the full rent of \$1,100 for an annual income of \$39,600. Assuming the renter's share of \$360 is 30% of the renter's monthly income (as commonly calculated by Section 8 or HOPWA programs), then the renter's annual income would be only \$14,400, well below the Respondents' MIR of \$39,600. Applying Respondents' MIR, with or without counting the value of the voucher toward the rent, invariably results in an applicant with a rental subsidy being deemed ineligible to rent an apartment from Respondents even though most, and in some instances all, of the rent, would be paid directly to Respondents by a voucher program administrator, not the tenant.

The conduct and policies described violate the Human Rights Law. As the New York State Division of Human Rights has noted in its *Guidance on Protections from Source of Income Discrimination in Housing under the New York State Human Rights Law* published in 2020 ("Guidance"), "[a] housing provider cannot have a facially neutral income ... requirement that is equally applied but has the effect of excluding populations with rental subsidies. ... For example, a requirement of a certain level of income based on a formula tied to the rental cost, even though required of other tenants, would be unreasonable if applied to a tenant who has 70% to 100% of the rent paid by the vouchering agency." (Guidance, Question 7, page 5.) Similarly, in Question 8, the Division explains that "[w]ith regard to vouchered ... tenants, a determination of ability to pay the tenant's or applicant's portion of the rent has already been made by the vouchering agency. If the housing provider found the person unqualified based on the same information obtained by the vouchering agency this would have the effect of negating the Law." (Guidance, Question 8, page 5.)

The Division of Human Rights has also advised that a housing provider may not refuse to contract with or comply with administrative requirements of housing voucher programs. "[L]andlords are not allowed to discriminate against persons with governmental rental subsidies based on the administrative burdens associated with those subsidies because that would effectively nullify the source-of-income provisions. ... Administrative burdens include ... compliance with paperwork requirements from the agency, acceptance of contractual terms required by the agency, and other such aspects of participation in the subsidized housing program." (Guidance, Question 12, page 6.)

Following is a summary for each apartment complex of what Respondents' agents told WRO's testers in tests completed between August 1, 2019 and May 6, 2021:

Glenmont Manor

1. August 1, 2019 – Agent told the tester that Respondents’ MIR was 3–3.5x the full monthly rent and must be met even for applicants with vouchers.
2. In early Spring 2020, WRO fair housing staff member researched Dawn Homes policies and downloaded from a Dawn Homes website a document entitled “Kendall Square, Glenmont Manor & Maple Manor Apartments Occupancy Standards”, which includes “INCOME REQUIRMENTS [sic]: ... Gross monthly income must be at least three and a half (3 ½) times the monthly rent.”

Loudon Arms

1. August 1, 2019 – Agent told the tester that Respondents’ MIR was 3–3.5x the full monthly rent and that Respondents would not include any of the value of the rental subsidy in calculating the tester’s yearly income.
2. April 6, 2021 – Agent told the tester that Respondents accepted Section 8 vouchers but along with the voucher, Respondents had an income requirement. For the 2-bedroom apartment coming available in mid-July that the tester inquired about, agent confirmed the monthly rent would be \$1,171 and the MIR would be \$38,000.
3. April 8, 2021 – Agent told the tester calling on behalf of her mother that Respondents accepted Section 8 vouchers, but applicants were still required to meet the MIR which for a \$1,109/month two-bedroom apartment would be \$38,000. When the tester told the agent that her mother had an annual income of approximately \$24,000 plus a voucher, the agent told the tester her mother would still have to meet the MIR for the full rent so that Respondents knew that if the mother was removed from the Section 8 program she could still afford to pay for an apartment on her own.
4. May 6, 2021 - Agent told the tester that Respondents’ MIR of 3x the full rent would apply even though the tester had a Section 8 voucher. Also, the agent told the tester that he would need to pay a deposit of \$1,149 before the Respondents would start to work on his rental application. When the tester explained that if he had an income of 3x the rent, then he wouldn’t need a Section 8 voucher, the Respondents’ agent agreed with the tester.

Maple Manor

1. August 1, 2019 – Agent told the tester that Respondents’ MIR was 3 – 3.5x the full monthly rent and would apply even if the applicant had a rental voucher.

Village Park

1. August 1, 2019 – Agent told the tester that Respondents did not accept rental vouchers and explained that the MIR was 3–3.5x the full monthly rent. Agent also steered the tester away from Village Park to other apartment complexes in the area that accepted vouchers and were not owned or operated by Respondents.

Chelsea Ridge

1. August 7, 2019 – Agent told the tester that Respondents did not accept rental vouchers and explained Respondents' MIR. Agent also steered tester away from Chelsea Ridge to other apartment complexes in the area that accepted vouchers and were not owned or operated by Respondents.
2. December 13, 2019 – Agent told the tester that Respondents did not accept any rental vouchers and explained Respondents' MIR.
3. July 31, 2020 – Agent told the tester that Respondents accepted rental vouchers but had an income requirement based on the full rent of the apartment, ranging from \$43,000 to \$54,000 per year depending on the size of the apartment. Agent told the tester that Respondents would count the value of the voucher toward the MIR. Agent calculated the tester's voucher plus income and told the tester that she did not meet the MIR by \$15,000. Tester explained that the amount of her voucher would be paid directly to Respondents as rent, but agent said the tester would still have to meet Respondents' MIR.
4. March 23, 2021 – Agent told the tester that all applicants had to meet Respondents' MIR and that Respondents would count the voucher toward the tester's total income. Agent explained that the reason for this rule was because once the tester lived at the complex she might earn income that was too high for the program at some time in the future and then be dropped from the program. Agent did not say that employed applicants who might lose their jobs in the future were also required to provide proof of additional income at the time of application. After agent checked with a manager, she told the tester that Respondents would not sign a contract with anyone for rent other than the tenant. Since rental subsidy and voucher programs require a landlord to sign a contract with the program administrator to receive the program's share of the monthly rent, Respondents' policy excludes all applicants with rental subsidies.

Subsequent to their phone conversation, the Respondents' agent emailed the tester attaching documents, including a "Chelsea Ridge Price Sheet" with "Application Screening Criteria and Occupancy Standards," including "Income Requirements: Gross Verifiable Income must be three times the monthly rent plus any monthly fixed obligations. If the applicant(s) do not meet this guideline, owner may look at other factors in the approval process."

5. March 25, 2021 – Agent told the tester that all applicants had to meet Respondents’ MIR which is calculated at roughly 3x the total monthly rent.

Netherlands Village

1. September 21, 2020 – Agent told the tester that Respondents accepted vouchers but required 3x the full rent. Agent also said that the Respondents counted the value of the voucher toward the MIR.

Mill Creek

1. April 8, 2021 - Agent told the tester that Respondents accepted Section 8 vouchers but required 3x the full rent in annual income. When the tester explained that she had \$25,000 in annual income plus a Section 8 voucher, the Respondents’ agent said the tester would still need to meet the Respondents’ MIR.

Prior to April 2019 when the State Human Rights Law was amended to include source of income protection, Respondents had a policy of not accepting any rental subsidies or vouchers. During the first year after the amended law went into effect, some of the Respondents’ agents continued to tell prospective applicants that Respondents did not accept any rental subsidies or vouchers. Since 2019 and as recently as May of 2021, other agents informed prospective applicants some combination of the following:

- Respondents have a minimum income requirement (3x the full monthly rent or in some cases 3-3.5x) that is applied to renters with rental subsidies or vouchers who would only be paying a portion of the rent
- Respondents count the value of the voucher toward the income requirements
- Respondents do not count the value of the voucher toward the income requirement
- Respondents will not sign contracts with third parties to pay the rent, including rental subsidy programs
- Prospective applicants should consider applying to other apartment buildings in the area that are not owned by Respondents

Respondents’ policies and practices exclude virtually all prospective applicants with rental subsidies or vouchers based on source of income in violation of the New York State Human Rights Law.

9. The most recent date on which the alleged discrimination occurred:

From August 1, 2019, through May 6, 2021

10. Types of federal funding identified:

None.

11. The acts alleged in this complaint, if proven, may constitute a violation of the following laws:

New York State Human Rights Law, § 296(5).

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.

Marlene Zarfes

Marlene Zarfes, Executive Director
Westchester Residential Opportunities, Inc.

8/2/21

Date

STATE OF NEW YORK
COUNTY OF NEW YORK

On the 2nd day of AUGUST, 2021 before me, the undersigned, Marlene Zarfes, personally appeared to me, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to above, and executed the above complaint.

Maria M. Jimenez
Notary Public

Printed Name: Maria M. Jimenez

My Commission Expires: 12/05/2023

MARIA M. JIMENEZ
Notary Public, State of New York
Qualified in Bronx County
Reg. #01JI6252159
My Comm. Exp. 12/5/2023