

**Damon R. Maher**

Legislator, 10<sup>th</sup> District  
Chair, Labor & Housing



**Committee Assignments**  
Budget & Appropriations  
Parks & Recreation  
Planning, Economic Development & Energy

**MEMORANDUM**

TO: Benjamin Boykin, Chair, Board of Legislators

FROM: Damon R. Maher, Legislator – 10<sup>th</sup> District

DATE: December 3, 2020

RE: Eastchester Housing lawsuit

Please add the attached emails and articles from the Fair Housing Justice Center, Inc. regarding the Eastchester housing lawsuit for referral as correspondence to the Planning, Economic Development & Energy and Labor & Housing committees.

**From:** Craig Waletzko  
**Sent:** Friday, November 13, 2020 12:01 PM  
**To:** Burton, Lisa <lmb9@westchestergov.com>  
**Cc:** Maher, Damon <drm7@westchestergov.com>; Bateman, Marianne <mfb9@westchestergov.com>  
**Subject:** RE: Eastchester lawsuit

Thanks for supplying your email addresses. I have added you all to our mailing list and will send copies of the newsletter re the Eastchester case, as well as our latest monthly Interfaith Action Network newsletter which has some more updates on our work and fair housing issues in general.

Thanks again for reaching out.

Craig Waletzko, Community Engagement Coordinator  
Fair Housing Justice Center, Inc.  
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(212) 400-8207  
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Housing Justice Center <fhjc@fairhousingjustice.org>  
**Sent:** Friday, November 13, 2020 12:04 PM  
**To:**  
**Subject:** [ML] Newsletter  
**From:** Fair: Opening Acts - November 9, 2020: FHJC's Case Alleging Racially Discriminatory Residency Preferences Moves Forward

November 11, 2020



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# Opening Acts

The Newsletter of the Fair Housing Justice Center

## FHJC's Case Alleging Racially Discriminatory Residency Preferences Moves Forward

### FEDERAL COURT RULES AGAINST TOWN OF EASTCHESTER; DENIES MOTION FOR SUMMARY JUDGMENT

On September 28, 2020, the Honorable Judge Vincent L. Briccetti denied the Town of Eastchester's motion for summary judgment in full. On October 15, Judge Briccetti read his decision over the phone to the parties. A copy of the transcript of that telephonic hearing is available [here](#). This decision allows the Fair Housing Justice Center (FHJC) to proceed with its case against the Town for racial discriminatory housing practices.

#### Case Background

On November 21, 2016, the FHJC filed a lawsuit in federal court alleging that the predominantly white Town of Eastchester in Westchester County, New York uses discriminatory residency preferences that suppressed minority participation in the Town's Section 8 Housing Choice Voucher Program and in senior housing developments; denying housing opportunities to African American and Latinx populations; and perpetuating residential racial segregation.

The Town's Housing Choice Voucher Program used a residency preference that caused applicants who did not already live or work in the Town to remain on a waiting list until all residents had been

admitted. Judge Briccetti noted that "as of June 2017, the resident waiting list had 25 names, while the non-resident waiting list had 616 names."

The Court noted that "although the Town's Section 8 housing program defined "residents" to include those who worked in the Town, the Town did not advertise this fact to prospective program participants." The Court pointed to FHJC's undercover testing investigation saying:

"In 2008, Plaintiff had a tester applicant inquire about the Town's Section 8 program. During a recorded call, the tester was told by a Town Section 8 office employee that non-resident applicants faced an eight-to-ten-year wait, while resident applicants typically waited eight months to a year maximum. Plaintiff further states the tester was not told that the residency preference could be claimed by someone working in, but not yet living in, the Town.

In February 2016, a second tester was told the non-resident applicant wait time was ten to fifteen years, while the wait time for residents was much shorter. According to Plaintiff, this tester, like the first, was not told that he could qualify for a residency preference if he worked in the Town."

In his decision, Judge Briccetti cited the testimony of Eastchester's Section 8 Program Administrator who stated that "the Town had never received approval from HUD of the Town's use of residency preferences in its Section 8 program." In February 2016, the Section 8 Program Administrator informed HUD by email that the Town utilized a resident wait list and a non-resident wait list, and that the Town wished to close the non-resident wait list. In response, a HUD representative stated the Town's request had to be reviewed by HUD's fair housing office to ensure the Town did not run into any fair housing issues. The Town's Section 8 Program Administrator replied in an email. "LOL ... yes, I agree. I don't need to be front page of the news ... 4th page is ok ... not front!"

Rather than bring its Section 8 program into compliance with fair housing laws, the Town decided to abandon its Section 8 program and the State of New York assumed responsibility for the program, removed the residency preferences, and reordered the waiting list by date of application in 2019.

The Court's decision also referred to the Town's involvement in Sleepy Hollow Apartments, a 117-unit HUD subsidized development for low-income seniors. In 1975, prior to obtaining funding from HUD, the Town entered into an agreement with Sleepy Hollow's developer, requiring priority for renting apartments to Town residents. The agreement also provided that the Town, not Sleepy Hollow, would determine applicants' eligibility for occupancy. From 1978 through 2005, the Town's Section 8 office oversaw Sleepy Hollow's waiting list and applicant eligibility. By 2005, over 95% of Sleepy Hollow's 100-plus tenants were white, with one Black tenant. In 2005, HUD sent a letter to the owner of Sleepy Hollow directing the owner to suspend use of the residency preference, stating that such preference "could have a disparate impact on African-Americans and Hispanics as they have significantly lower representation in the preference areas when compared to the Housing Market Area," namely, Westchester County.

The Town also adopted a residency-based preference system in its zoning code for mixed-income multi-family senior housing, in which a minimum of 15% of units are rented or sold to senior citizens earning less than 80% of the area median income for Westchester County. Under the Town's Zoning Code, first preference is granted to Town residents, followed by immediate-family members of current and former residents, followed by Westchester County residents, and finally all other applicants. For current and former residents, the Zoning Code requires priority based on length of residency as well. The Town further required that a developer file and record a covenant on any senior housing development to ensure that the priority system is administered correctly. Failure to comply with the residency preferences is punishable by fines and imprisonment. The Court noted that FHJC's expert, Justin Steil, found that these preferences again favored white households over non-residents more likely to be African-American or Latinx households.

On November 4th, 2009, the Town Board held a public hearing to discuss amending its Zoning Code to permit senior housing development in the Town. During this meeting, a Town resident voiced his opinion that the proposed law was a "major concern" because it would welcome a "H.U.D. project" to the Town. The resident further stated his concern that a new development "might turn into a Sleepy Hollow, where we lose control of what we have." In response, Town Supervisor Anthony Colavita stated any senior housing permitted by the new law would be for "Eastchester, Tuckahoe, and Bronxville residents only." Supervisor Colavita noted the Town would not use federal funding for senior housing, and stated that if a developer "took HUD money, they therefore couldn't comply with our zoning code, and therefore they couldn't build a building and wouldn't get permission."

In September 2013, at a public Planning Board meeting to discuss a proposed senior housing development application, a Town resident said the development would turn the Town into "a Bronx neighborhood." Another resident stated, "more Section 8 people will come in," and "we're going to have the first project in Eastchester. That's what it looks like to me, it looks like a housing project." The resident further stated, "these people" would move in and "there goes our neighborhood." He also said, "Do you want this to become the Bronx again? ... This is not New Rochelle. This is not Yonkers. We don't want this. If we wanted that, we would live there--where it's much cheaper."

About a month later, Supervisor Colavita sent a letter to Town residents to address concerns expressed in "numerous phone calls and inquiries" that he had received about senior housing applications. Supervisor Colavita noted that several residents had expressed having heard rumors that prospective senior housing developments would become housing projects for "nonresidents," and he noted: "**ALL OF THE ABOVE IS COMPLETELY FALSE,**" and that the development application was "for a brand new fair market" apartment building for our Eastchester, Bronxville and Tuckahoe senior citizens." Colavita then noted the Town's residency preference: "Eastchester, Tuckahoe and Bronxville seniors have priority over all others. Though it is extraordinarily unlikely, in the event there are no Eastchester, Tuckahoe and Bronxville seniors in need of an apartment, then immediate family members of our town residents ... have next priority."

#### **Key Findings in Decision**

The Court held that even though the Town closed its Section 8 program after FHJC filed its lawsuit, FHJC's claims are not moot. The Court reasoned, "... that the Town has no current desire or need to re-establish a Section 8 program does not demonstrate, as a matter of fact and law, that its implementation of a housing voucher program with a residency preference cannot reasonably be expected to recur. For these reasons, Plaintiff's claims are not moot."

The Court also considered whether FHJC has a right to bring this lawsuit. Judge Briccetti affirmed FHJC's standing with the following statement:

"It is well settled that a non-profit fair housing organization, like Plaintiff, may sue on its own behalf for injunctive relief, declaratory relief, and for damages for diversion of resources and frustration of its mission....Indeed, "the Supreme Court and the Second Circuit have repeatedly found that organizations that have conducted investigations into alleged violations of the FHA have suffered an injury-in-fact and have standing under the FHA.

Such injury-in-fact can be caused by, for example, expenditure of staff time and resources to investigate and respond to the Defendant's discriminatory practices, diverting such resources away from other activities the organization could otherwise conduct. Even at the summary judgment phase, "only a perceptible impairment of an organization's activities is necessary for there to be an injury in fact. Here, the record evidence suggests Plaintiff has been harmed by the Town's Section 8 housing practices and its enactment and enforcement of its senior housing law. The record suggests Plaintiff has, for years, diverted resources to investigate the Town's housing practices, which has frustrated Plaintiff's mission."

Judge Briccetti concluded "Simply put, Plaintiff has set forth sufficient allegations and evidence suggesting it has suffered an actionable injury in fact."

On whether the FHJC had presented enough evidence to proceed with its case under a theory of "disparate impact" liability, the Court found that evidence provided by FHJC "raises questions of fact as to whether the Town's residency preference will have an adverse disparate impact on Black and Hispanic renters and buyers." Indeed, FHJC's expert, Justin Steil, "hypothesized, based on a statistical analysis and population demographics, that the Town's senior housing residency preference is highly likely to create an adverse impact based on race and ethnicity." For example, Steil notes that "Assuming a randomized applicant pool that reflects the demographics of Westchester County -- the marketing region identified by Defendant itself -- the likely application pool for senior housing...in Eastchester will be 70 percent white and 30 percent nonwhite. But with the Town's residency preference..., the recipients of such housing would likely mirror the demographics of the Town age 55 and over: namely, 91 percent white and 9 percent nonwhite, even under the most conservative estimates."

The Court also considered the FHJC's claim of intentional discrimination. Citing the comments referenced earlier from public hearings and meetings and actions taken in response to those comments by Town Supervisor Colavita, Judge Briccetti concluded "a reasonable factfinder could conclude that the Town was motivated, at least in part, by its residents' fears of racial integration when it enacted the senior housing law and residency preference."

**FHJC Executive Director Fred Freiberg**, "We are pleased with this decision and hope that it will spur the Town of Eastchester to negotiate in good faith to reach a fair resolution of this case. The federal Fair Housing Act prohibits predominantly white suburban communities like Eastchester from adopting and enforcing policies in land-use, zoning or affordable housing programs that effectively exclude or limit access to housing opportunities based on race or national origin."

The FHJC is represented by **Diane L. Houk** with the law firm of **Emery Celli Brinckerhoff Abady Ward & Maazel LLP**.

The mission of the Fair Housing Justice Center (FHJC), a nonprofit civil rights organization, is to eliminate housing discrimination; promote policies and programs that foster open, accessible, and inclusive communities; and strengthen enforcement of fair housing laws in the New York City region.

FHJC's investigation in this case was supported with funding from a Private Enforcement Initiative (PEI) grant received from the Fair Housing Initiatives Program (FHIP) administered by the U.S. Department of Housing and Urban Development (HUD).

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## Fair Housing Justice Center

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