

<b>Housing Rights Initiative, Inc. v Elliman</b>
2023 NY Slip Op 30036(U)
January 9, 2023
Supreme Court, New York County
Docket Number: Index No. 154472/2022
Judge: Mary V. Rosado
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. MARY V. ROSADO PART 33M**

*Justice*

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HOUSING RIGHTS INITIATIVE, INC.,

Plaintiff,

**INDEX NO. 154472/2022**

**MOTION DATE 11/22/2022**

**MOTION SEQ. NO. 011**

- v -

DOUGLAS ELLIMAN, MARJORIE TORNATORE, MARYAM DAGHOUMI, DORIAN NASTO, TOY ONG CHEUNG, 109 CONGRESS STREET LLC, 254-125 LLC, COLDWELL BANKER RELIABLE, CHRISTIAN FLOREZ, OXFORD PROPERTY GROUP, MAY AMOS, 750 TENTH AVE REALTY LLC, AAG MANAGEMENT, INC., REMAX EDGE, ELENA LEAL, 9430 RIDGE OWNERS CORP, KEYSTONE REALTY USA, PARESHKUMAR SHAH, GLEN OAKS VILLAGE OWNERS, INC., CENTURY HOMES REALTY GROUP LLC, JANE GAO, STEVEN CORCORAN REAL ESTATE LLC, SHERRIE MORGAN, HOMEMAX REALTY, ERIC ZHAO, 351 MARINE OWNERS CORP, EXP REALTY, GORDANA SKUGOR, NEW YORK CASAS, CHARLAR ACAR, RALPH FRANKEN LLC, MOMENTUM REAL ESTATE, LILY LUU, STANLEY CHEUNG, AVANGUARD REALTY CORP, JENNY VASSILEVA, DAGINATI LLC, SARDELL REALTY LLC, KAREN SARDELL, EDEL FAMILY MANAGEMENT CORP, JHOLEYNI PENA, REAL NEW YORK, EDWARD XU, CUCCIA EDWARD, J., CHRISTY CHOK, L & C REALTY ASSOCIATE, INC., J SIKAR REALTY, NELLY BERNSTEIN, AAA Y.S. REALTY INC, FEI CHEN, NYC MODERN REALTY, INC., HELEN LIN, GUO XIAN KAI, THE COOP CONNECTION LLC, EILEEN MASSONE, SRL MANAGEMENT LLC, VLADISLAV DAVIDOV, BROOKLYN PROPERTIES OF SEVENTH AVENUE, INC., CARLOS ARZE, 685 STERLING ASSOCIATES LLC, REALTEGRITY NY, CARYL SCHIFF, FOLEY'S 8 REAL ESTATE, TIM FOLEY, MONTGOMERY 5 ASSOCIATES LLC, J. WINTER REAL ESTATE, JEFF WINTER, AIDONIS REALTY, MARIA AIDONIS, KELLER WILLIAMS REALTY OF GREATER NASSAU COUNTY, JOHN ARGYROS, JOHN SILVER LLC, MACCABEE 1 REALTY CORP, DAVID NAJAFI, ASMA BEGUM EMRAN, REALTY PLUS GROUP, INC., DAE KIM, YOUNGGIL CORP, COMFORT PROPERTIES, INC., OSAMA GHEITH, AMERICAN REALTY AIJ 214, LLC, FULTONEX REALTY, EUNICE CHEN, THE PAVILION OWNERS CORP, NEW SPIRIT REALTY, INC., FRANK DESANTIS, APTS 601 79 LLC, HOMETOWN PROPERTIES, JACK CHENG, ABBA REALTY ASSOCIATES, ANAT ELGARISI, MENDEL BOYMELGREEN, RENAISSANCE EQUITY HOLDINGS

**DECISION + ORDER ON  
MOTION**

LLC A, CONTACT REALTY, DAYANA ZAMORA, B. BELINDA REALTY LLC, BELINDA GILLIS, 863 STERLING LLC, IVEY NORTH LLC, AYANNA BARTON, BATRA GROUP, INC., JOHNATHAN CRUZ, 251 HIMROD LLC, OLAUSSON PARTRIDGE STEFFAN, REBEKAH GIBSON, MANHATTAN FLATS, Yael David, GUARDIAN REALTY GROUP, DANNY DOUMANIS, 25-41 12TH STREET LLC, MAYFLOWER REALTY AND ASSOCIATES, LINDA CHENG, EVA M. DANIELS REALTY, EVA DANIELS, CITI NEST GROUP LLC, MIKE ATIA, 123 PARK LLC, MAXIMILLION REALTY, INC., BORIS BERYLAND, DAVID REYTBAT, RICHARD CUFFARO, EDWARD ROZENTHAL, NIINA POOLE, PAUL NYLAND

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 011) 130, 131, 132, 133, 134, 135, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 402

were read on this motion to/for

DISMISS

Upon the foregoing documents, and after oral argument on December 13, 2022, where Randolph McLaughlin, Esq. and Casey Pearlman, Esq. appeared for Plaintiff Housing Rights Initiative, Inc. (“HRI” or “Plaintiff”) and Reena Rani, Esq. appeared for Defendants Paul Nyland (“Nyland”) and Maryam Daghmoumi (“Daghmoumi”) (collectively “Moving Defendants”), the Moving Defendants’ motion for summary judgment is denied. Plaintiff’s cross-motion to amend its Complaint is granted.

### **I. Factual and Procedural Background**

Plaintiff brought this action against real estate agents, brokerage firms, property management companies, and property owners, alleging intentional and willful source of income discrimination in violation of the New York State Human Rights Law (“NYSHRL”) and New York City Human Rights Law (“NYCHRL”) (NYSCEF Doc. 1). Plaintiff’s Complaint was filed on May 25, 2022 (*id.*). It is alleged that Defendants have willfully and intentionally refused to rent apartments to tenants who intend to pay their rent with CityFHEPS rental vouchers (*id.* at ¶¶ 4-5).

Plaintiff is a nonprofit housing group (*id.* at ¶ 9). Plaintiff alleges it has been injured by having to expend resources to investigate and to respond to Defendants' discriminatory practices, which not only diverted Plaintiff's resources but frustrated Plaintiff's mission (*id.*). Plaintiff utilized testers whose investigations allegedly revealed source of income discrimination by Defendants who refused to accept CityFHEPS vouchers for advertised apartments.

To qualify for a CityFHEPS voucher, a household must have a gross income at or below 200% of the federal poverty level. Further, the household must (a) include a veteran who is at risk of homelessness, or (b) the New York City Department of Social Services must determine that a CityFHEPS voucher is required to avoid shelter entry, or (c) the household must be facing eviction and includes someone who lived in a shelter and has an active adult protective services case, or (d) would otherwise be eligible for CityFHEPS if they were in a shelter (NYSCEF Doc. 49). The CityFHEPS voucher is issued to some of New York City's most indigent and vulnerable citizens and is meant to prevent homelessness and relieve New York City's overly burdened shelter system. Plaintiff alleges that in 2019, only 20% of New Yorkers with a CityFHEPS voucher were able to secure housing, and that one of the primary reasons for this low percentage is source of income discrimination (NYSCEF Doc. 1 at ¶ 94).

Plaintiff alleges that Defendants must comply with anti-discrimination laws under the NYSHRL and NYCHRL (*id.* at ¶ 95). Further, Plaintiff allege that the monthly rent charged by all named Defendants at each of the properties Plaintiff investigated did not exceed the CityFHEPS program's maximum allowable rent (*id.* at ¶ 96). Moreover, Plaintiff alleges that all Defendants, their employees, or their agents, told Plaintiff's testers that Defendants would not accept CityFHEPS as a source of payment for rent at the investigated properties (*id.* at ¶ 97).

As to Moving Defendants, it is alleged that Daghmoumi was employed by Defendant Douglas Elliman to broker apartments in New York City (*id.* at ¶ 13). It is further alleged that on February 7, 2022, an HRI tester posing as a prospective tenant contacted Daghmoumi regarding an apartment owned by Defendant Toy Ong Cheung (“Cheung”) located at 1560 78th Street #2, Brooklyn, New York (the “78th Street Apartment”) (*id.* at ¶ 100). The apartment was advertised as a three bedroom for \$2,500 per month (*id.*). Daghmoumi confirmed that the Apartment was available (*id.*). However, when the tester asked if they could use a CityFHEPS voucher, Daghmoumi stated “the owner is not accepting that.” (*Id.*). It is alleged that Daghmoumi and Douglass Elliman were acting as agents for Cheung when the aforementioned statements were made (*id.*).

Plaintiff alleges that Nyland is a property owner in New York City and owns and brokered an apartment located at 71-50 69th Place #2L, Ridgewood, New York 11385 (the “69th Place Apartment”) (*id.* at ¶ 90). The 69th Place Apartment was listed on Trulia as a two bedroom for \$1,895 per month (*id.* at ¶ 155). Plaintiff alleges that on October 25, 2021 an HRI tester posing as a prospective tenant contacted the 69th Place Apartment’s property manager who confirmed that the apartment was available (*id.*). However, when the tester asked if she could use a CityFHEPS voucher, she was told “we don’t get involved in the city programs and vouchers, I’m sorry.” (*id.*). Plaintiff alleges, upon information and belief, that Nyland was the property manager and made the aforementioned statements himself (*id.*).

In the case at bar, the Moving Defendants filed their Answer for Nyland on July 20, 2022 and for Daghmoumi on July 26, 2022 (NYSCEF Docs. 8 and 10). Moving Defendants filed the instant motion for summary judgment dismissing Plaintiff’s Complaint on October 14, 2022 (NYSCEF Doc. 130). Moving Defendants also seek to assert collateral estoppel and standing

defenses in support of their motion for summary judgment, even though they did not include those defenses in their Answer, nor have they sought leave to amend their Answer (*id.*).

In response, on November 23, 2022, Plaintiff cross-moved to amend its Complaint to specify further the alleged injuries it has suffered as a result of Defendants' alleged discrimination (NYSCEF Doc. 311). Plaintiff also opposes the motion for summary judgment by arguing that at this pre-discovery juncture, there are material issues of fact which warrant denial of summary judgment (NYSCEF Doc. 322). Plaintiff also argues if the Court does accept Moving Defendants' unpled collateral estoppel and standing affirmative defenses, that collateral estoppel does not apply since dismissal in the other case was based on standing. Plaintiff further asserts that since organizations like HRI have standing to bring claims based on testing under the Fair Housing Act, and since the NYSHRL and NYCHRL are meant to provide even broader remedial protection than their federal counterparts, then HRI has standing to bring claims of housing discrimination under both the NYSHRL and NYCHRL (NYSCEF Doc. 293). Plaintiff also argues that it has stated a cause of action under the NYSHRL and NYCHRL by alleging intentional and willful violations by Moving Defendants of applicable sections of the NYSHRL and NYCHRL.

## **II. Discussion**

### **A. Moving Defendants' Summary Judgment Motion**

"Summary judgment is a drastic remedy, to be granted only where the moving party has tendered sufficient evidence to demonstrate the absence of any material issues of fact." (*Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The moving party's "burden is a heavy one and on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party." (*Jacobsen v New York City Health and Hosps. Corp.*, 22 NY3d 824, 833 [2014]). Once this showing is made, the burden shifts to the party opposing the motion to produce

evidentiary proof, in admissible form, sufficient to establish the existence of material issues of fact which require a trial. *See e.g., Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pemberton v New York City Tr. Auth.*, 304 AD2d 340, 342 [1<sup>st</sup> Dept 2003]). Mere conclusions of law or fact are insufficient to defeat a motion for summary judgment (*see Banco Popular North Am. v Victory Taxi Mgt., Inc.*, 1 NY3d 381 [2004]).

The Court finds that at this juncture, summary judgment dismissing Plaintiff's claims is wholly inappropriate, as the Moving Defendants have fallen far short of their evidentiary burden. Moving Defendants have failed to even tender an affidavit from either Daghmoumi or Nyland explaining their alleged statements, the interactions they had with the HRI Testers, or the alleged agency relationship between the building owners and Daghmoumi or Nyland. The total evidentiary dearth presented on Moving Defendants' motion has done nothing to eliminate the numerous material issues of fact presented by the pleadings. Further, Plaintiff has submitted the affidavit of deputy director of HRI, Joshua Murillo, in opposition to Moving Defendants' motion (NYSCEF Doc. 323). Moreover, given the numerous motions to dismiss and the instant motion for summary judgment, Plaintiff has not had the opportunity to conduct any discovery as it pertains to either Daghmoumi or Nyland, making summary judgment inappropriate under CPLR § 3212(f) (*Stone Column Trading House Ltd. v Beogradska Banka A.D.*, 139 AD3d 577, 578 [1<sup>st</sup> Dept 2016]; *Blech v West Park Presbyt. Church*, 97 AD3d 443 [1<sup>st</sup> Dept 2012]). Moving Defendants have even failed to submit a statement of material facts in conformance with 22 NYCRR § 202.8-g. The procedural infirmities riddling Moving Defendants' motion for summary judgment prevent this Court granting Moving Defendants the relief they seek.

Further, while Moving Defendants attempt to incorporate the other Defendants' arguments related to standing and collateral estoppel, those arguments are unpersuasive for the reasons laid

out in the Court's Decision and Orders related to motion sequences 002 through 006 and 008 through 010. As Moving Defendants' motion for summary judgment is being denied as premature, it is denied without prejudice.

**B. Plaintiff's Cross-Motion to Amend the Complaint**

Leave to amend pleadings is freely granted in the absence of prejudice if the proposed amendment is not palpably insufficient as a matter of law (*Mashinsky v Drescher*, 188 AD3d 465 [1st Dept 2020]). A party opposing a motion to amend must demonstrate that it would be substantially prejudiced by the amendment, or that the amendments are patently devoid of merit (*Greenburg Eleven Union Free School Dist. V National Union Fire Ins. Co.*, 298 AD2d 180, 181 [1st Dept 2002]). Importantly, a Plaintiff need not establish the merit of its proposed allegations, but only show that they are not clearly devoid of merit (*Fairpoint Cos., LLC v Vella*, 134 AD3d 645 [1st Dept 2015]). Delay alone is not sufficient to deny leave to amend (*Johnson v Montefiore Medical center*, 203 AD3d 462 [1st Dept 2022]). Because leave to amend pleadings is freely granted, Plaintiff has demonstrated their proposed allegations are not clearly devoid of merit, and because there is no prejudice given the early stages of litigation and lack of any new causes of action being pled, the Court finds that Plaintiff's cross-motion is granted.

Accordingly, it is hereby,

ORDERED that Moving Defendants motion for summary judgment is denied; and it is further

ORDERED that Plaintiff Housing Rights Initiative's cross-motion to amend its Complaint is granted, and the amended complaint in the proposed form annexed to the moving papers shall be deemed served upon service of a copy of this order with notice of entry thereof; and it is further

ORDERED that Moving Defendants shall serve an Amended Answer to the Amended Complaint or otherwise respond thereto within 20 days from the date of said service; and it is further

ORDERED that within 10 days of entry, Plaintiff Housing Rights Initiative shall serve with notice of entry a copy of this Decision and Order on all parties to this action; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

1/9/2023  
DATE

Mary V Rosado USC  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/>
				REFERENCE	