

**Newson v Vivaldi Real Estate Ltd.**

2023 NY Slip Op 31857(U)

June 2, 2023

Supreme Court, New York County

Docket Number: Index No. 452625/2022

Judge: Lori S. Sattler

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LORI S. SATTLER PART 02TR**

*Justice*

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TERRY NEWSON,

Plaintiff,

- v -

VIVALDI REAL ESTATE LTD., JASON HOROWYTZ,  
STEPHANIE DWAN

Defendant.

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**INDEX NO.** 452625/2022

**MOTION DATE** 12/29/2022

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16

were read on this motion to/for DISMISS.

Plaintiff Terry Newson (“Plaintiff”) commenced this action alleging violations of the New York City Human Rights Law (“City HRL”), specifically New York City Administrative Code § 8-107(5) which prohibits housing discrimination based on source of income. Defendants Jason Horowitz and Stephanie Dwan (“Unit Owners”) move to dismiss the action as against them. Defendant Vivaldi Real Estate Ltd. (“Vivaldi”) submits an affirmation in support of the motion, which it incorrectly characterizes as one for dismissal of the entire action. Plaintiff opposes the motion.

As set forth in the Complaint, Plaintiff is a client of the New York City HIV/AIDS Services Administration (“HASA”) and therefore entitled to receive a HASA subsidy for housing in New York City. HASA informed Plaintiff that if he found “a habitable apartment in the range of \$1,600 a month,” the organization would pay his entire rent each month directly to the landlord “on an ongoing basis,” and would also provide a security voucher, broker’s fee assistance, and the first month’s rent (Complaint ¶ 17).

Plaintiff saw a listing on Zillow for an apartment, owned by the Unit Owners, in the Bushwick neighborhood of Brooklyn for \$1,495. On or about March 31, 2021, Plaintiff requested an application for the unit through Zillow, and wrote, “I also wanted to know if this listing accepts HRA or HASA vouchers that covers brokers fees and rent coverage up to \$1600?” (*id.* ¶ 19). The following day, he was contacted directly by email by Kathy Woo (“Woo”), a real estate agent with Vivaldi. Woo wrote: “To the bet [sic] of my knowledge, the building is not approved to receive any housing assistance vouchers” (*id.* ¶ 20). The Complaint alleges that Woo never subsequently contacted Plaintiff to inform him that he could rent the apartment or to otherwise assist him with his inquiry or application (*id.*). Plaintiff did not apply to rent the apartment or otherwise communicate with Woo or anyone else about renting the apartment (*id.* ¶ 20-21).

Plaintiff alleges no approval is required to accept housing vouchers, and that “Defendants’ refusal to conduct business specifically with an individual who has a full housing subsidy from HASA” amounts to intentional and willful discrimination. He asserts separate causes of action against Vivaldi and the Unit Owners. His cause of action against the Unit Owners alleges they “are vicariously liable for the discriminatory acts of their agents Vivaldi/Kathy Woo” (Complaint ¶ 45). The Unit Owners now move to dismiss as against them pursuant to CPLR 3211(a)(7).

When considering a motion to dismiss for failure to state a cause of action under CPLR 3211(a)(7), “the court is required to accept as true the facts as alleged in the complaint, accord the plaintiff the benefit of every favorable inference and strive to determine only whether the facts alleged fit within any cognizable legal theory” (*Vig v New York Hairspray Co., L.P.*, 67

AD3d 140, 144-145 [1st Dept 2009], citing *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]).

New York City Administrative Code § 8-107(5)(a) provides:

It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, . . . or any agent or employee thereof . . . because of any lawful source of income of such person or persons. . . to represent to such person or persons that any housing accommodation or an interest therein is not available for inspection, sale rental or lease when in fact it is available to such person.

Subsection 8-107(5)(c) further provides:

It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent therefor . . . to refuse to sell, rent or lease any housing accommodation . . . or to refuse to negotiate for the sale, rental or lease, of any housing accommodation . . . because of any lawful source of income of such person or persons, . . . or to represent that any housing accommodation . . . is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation . . . from any person or group of persons . . . because of any lawful source of income of such person or persons . . . .

Finally, subsection 8-107(13)(a) provides in relevant part: “An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section.” The City HRL must be “construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof” and any exceptions or exemptions are to be construed narrowly (§ 8-130; *see also Williams v New York City Hous. Auth.*, 61 AD3d 62, 66-69 [1st Dept 2009]).

The Unit Owners argue that the action must be dismissed as against them because the Complaint fails to allege facts that state a claim under the City HRL. They argue Woo’s email did not constitute a refusal to negotiate with or rent to Plaintiff, but merely amounted to confusion over the process for accepting housing subsidies. They further contend that no discrimination can be found since Plaintiff never applied for the

apartment and that Plaintiff having asked whether he could use a subsidy amounts to a concession that they are not always accepted. The Unit Owners argue that because the underlying conduct is not discriminatory, the Complaint fails to state a claim.

The City HRL specifically provides that misrepresenting the availability of an apartment based on a potential renter's source of income constitutes unlawful discriminatory conduct. The Complaint alleges that the Unit Owners' broker represented to Plaintiff that the apartment could not be rented to someone using HASA subsidies when in fact it could. Viewing these allegations in a light most favorable to Plaintiff and considering the City HRL's liberal construction, the Complaint sufficiently pleads facts that allege a cause of action of discrimination based on source of income. The Unit Owners' contentions that Plaintiff's claims must fail because he was not explicitly told not to apply, or that the email was not discriminatory because Woo used the phrase "to the best of my knowledge" are inconsistent with the statute's plain language and its broad remedial purposes. Therefore, the motion to dismiss based on a failure to allege discriminatory conduct is denied.

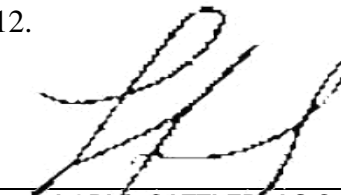
The Unit Owners further argue that even if Woo's conduct did amount to unlawful discrimination, they cannot be held responsible for it under § 8-107(5)(a). They contend that the City HRL imposes vicarious liability on employers only. Additionally, they argue that the Complaint alleges that only Vivaldi, and not Woo, was their agent, and because of that they maintain the Complaint fails to allege facts sufficient to maintain a cause of action against them based on Woo's email. Defendants do not submit any documentary evidence that would refute Plaintiff's allegations as to the Unit Owners' relationship with Vivaldi or Woo.

Section 8-107(5)(a) classifies certain activities as unlawfully discriminatory when performed by “the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, . . . or any agent or employee thereof.” The term “agent” as used in this section is not defined in the City HRL (*see* § 8-102). In *Doe v Bloomberg*, the Court of Appeals held that an agent is “someone who is authorized to act for or in place of another” (36 NY3d 450, 460 [2021][internal citations omitted]). Based on that definition, and because the statute distinguishes between agents and employees, the Court finds that, contrary to the Unit Owners’ contention, the statute applies to owners through their agents and does not require that an owner be an employer of that agent.

Finally, the Unit Owner’s argument that the Complaint does not sufficiently connect them, Vivaldi, and Woo for purposes of the City HRL is not founded. The Complaint alleges that Vivaldi managed the listing for the Unit Owners’ apartment and that Woo was a broker with Vivaldi. The Complaint further alleges that Woo responded to a question about the listing posed through a third-party website, indicating some authority to act on the Unit Owners’ behalf. The Court finds that Plaintiff has sufficiently alleged facts that state a claim against the Unit Owners pursuant to § 8-107(5)(a).

Accordingly, the motion to dismiss is denied. A Preliminary Conference shall be held on July 18, 2023 at 9:30 am at 60 Centre Street, Room 212.

This constitutes the Decision and Order of the Court.



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LORI S. SATTLER, J.S.C.

6/2/2023  
DATE

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