

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

REBECCA TAYLOR, et al	:	DOCKET NO. 3:08-cv-557(JBA)
Plaintiffs	:	
V.	:	
THE HOUSING AUTHORITY OF THE	:	
CITY OF NEW HAVEN, et al	:	
Defendants	:	April 7, 2010

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR ADDITIONAL FINDINGS**

For the reasons described herein, plaintiffs move for additional factual findings material to their claims under the FHAA that defendants provided services to the non-disabled population that they denied to the plaintiffs. The evidence relevant to such additional findings is summarized below.

A. LEGAL BASIS

“Rule 52(b) provides that “[o]n a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings-or make additional findings-and may amend the judgment accordingly.” Fed.R.Civ.P. 52(b). “[A] party may move to amend the findings of fact even if the modified or additional findings in effect reverse the judgment. If the trial court has entered an erroneous judgment, it should correct it.” Golden Blount, Inc. v. Robert H. Peterson, 438 F.3d 1354, 1358 (Fed. Cir. 2006). “This directive to correct erroneous judgments appears particularly clear where, as here, the

parties have not contributed to the court's error.” U.S. v. Texas, 572 F. Supp.2d 726, 730 (E.D. Texas 2008) (noting that the court’s duty to alter its findings where the evidence relied upon by the movant was admitted at trial).

B. EVIDENTIARY BASIS

Plaintiffs have claimed since the commencement of these proceedings that the defendants’ refusal to provide a list of units to the disabled that is comparable to the list it provides to the non-disabled violates the FHAA. Thus, findings related to this issue are material. The claim and the facts to support it were presented by the plaintiffs in both pleadings¹ and proposed findings of fact. At trial, plaintiffs produced a number of documents specifically related to these claims. See generally, Pl. Ex. 42-50. In addition, witnesses Calvin, Deloatch, and Salovitz gave live testimony relevant to the issue, and witnesses Ford, Jones and Taylor gave testimony admitted by agreement in the form of transcripts from other proceedings, depositions and/ or affidavit. Thus, there exists sufficient basis for the Court to issue specific factual findings on whether the defendants violated the FHAA by adhering to a policy of providing housing-related services to its non-disabled Section 8 participants that it refused to provide to the disabled. The

¹ See Third Amended Complaint, ¶65:

“The Defendants have intentionally discriminated against the plaintiffs on account of their disabilities and handicaps, discriminating against them in the provision of services and otherwise making dwellings unavailable to them by:

- a. refusing to maintain a current listing of the available, accessible apartments (“AUL”), such as HANH maintains for non-disabled Section 8 households;. . .”

Memorandum of Decision would be incomplete without specific findings of fact on this claim.

The following paragraphs in bold are quoted from plaintiffs' pre-trial proposed findings of fact.

1. HANH generates a monthly listing of available apartments to give to Section 8 voucher holders ("Section 8 List"), but fails to provide a comparable monthly listing of available accessible apartments to give to disabled Section 8 voucher holders ("AUL").

Testimony of Rebecca Taylor: Ex. 1, pp. 33-34.

Admissions of Defendants: Tr. Oral Argument May 7, 2008, p 20, lines19-25

4. In September of 2007, a federal court ordered HANH to produce an AUL pursuant to its obligations under 24 C.F.R. § 8.28(a)(3). However, the list did not include any information on availability.

Exhibit 43: List produced by Defendants in compliance with Gaither v. HANH, Docket No. 59.

5. In May of 2008, this Court entered a stipulated order that HANH would produce an AUL, update it monthly, and to make it continuously available to the public. In response to the August 7, 2008 deadline, HANH produced a list very similar to the Gaither list, again without availability information. However, HANH added to the Taylor List the following disclaimer, which is not present on the regular Section 8 List: "*Check with the rental office for information about pricing and availability.*"

Taylor v. HANH, Docket No. 24, ¶ 5:

"HANH will provide a current list of available accessible units in New Haven within three months of May 6, 2008, to be updated on a monthly basis, and that list will be provided by HANH to individuals who request it."

Ex. 46: Example of Section 8 listing regularly produced by Defendants, dated July 1, 2008.

Ex. 47: List produced by Defendants in compliance with Docket No. 24, ¶ 5.

6. The Taylor List was personally reviewed, edited, and approved by Karen Dubois-Walton, as the current Executive Director of HANH. It did not use the same headings or format as the Section 8 List, and it was not produced using the same database or staff person.

Testimony of DeLoatch: Tr. August 18, 2009, pp.310-314.

7. As of July 2008, HANH Section 8 Specialists had not been trained to offer an AUL to disabled Section 8 households unless directly asked for it.

EVIDENCE:

Testimony of Lashanda Jones: Joint Ex. 19, Depo. Tr. pp. 68-69

Testimony of Heiwa Salovitz: Tr. August 21, 2009, pp.1047-1048.

Testimony of Iris Santiago: [Cite to be provided upon completion of transcript].

10. Until at least September 2008, HANH front desk receptionists, if asked by members of the public for an accessible unit listing, responded that there is no such listing.

EVIDENCE:

Affidavit of Terri Ford:

Ex. 44: In February of 2008, Terri Ford asked for a listing of accessible Section 8 housing. A HANH employee told her that there was no such listing.

Testimony of Ed Calvin: Tr. August 18, 2009, pp. 300-303.

Ex. 45: Documents provided to Ford and Calvin.

C. ANALYSIS

The evidence overwhelmingly demonstrates that the defendants provided a valuable service to the non-disabled community that they refused to provide to the disabled community. This service is a listing of apartments whose owners are willing to rent to Section 8 participants, updated monthly. Such listing includes the date that the apartment is expected to become available, a piece of information that is obviously critical to the usefulness of the listing. See Ex. 46, July 1, 2008 Section 8 Listing. Defendants, in response to the plaintiffs' lawsuits, have created separate lists for the disabled. Yet these lists have never included availability information, and as such are in the classic sense, "separate, but not equal."

While the defendants managed to produce some confusion about which staff members produced which versions of the court-ordered lists, they ultimately offered no evidence to contradict plaintiffs' showing that such lists were never distributed—despite this Court's order (#24) requiring distribution to the public. Similarly, even the defendants concede that they do not update the disabled listing, in the same manner that they do the non-disabled listings. See Ex. 52 (DeLoatch Excel Spreadsheet, containing the notation "Last updated August 5, 2008").

The defendants owe the plaintiffs at least the basic dignity of a comparable listing, and thereby a fighting chance to find an accessible Section 8 apartment.

D. CONCLUSION

Plaintiffs respectfully move this Court to make additional factual findings in accord with the weight of the evidence, which has been summarized and cited above.

ATTORNEY FOR THE PLAINTIFFS

/s/ _____

Jennifer C. Vickery (Fed. Bar No. CT24089)

P.O. Box 1281

New Haven, CT 06505-1281

Tel (203) 809-0223

Fax (203) 248-0223

Email: vickerylaw@me.com

CERTIFICATION

I hereby certify that the foregoing Notice has been served electronically on this 7th day of April, in compliance with Fed. R. Civ. P. Rule 5, on the following persons, who constitute all counsel and pro se parties of record:

Timothy Pothin, Esq.
Donn Swift, Esq.
Lynch, Traub, Keefe and Errante, P.C.
P.O. Box 1612
52 Trumbull Street
New Haven CT 06509-1612
Fax (203) 782-0278

/s/ _____
Jennifer Vickery