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LEGAL ACTION OF WISCONSIN



Date: 9 May 2013

To: CDA
215 Martin Luther King, Jr. Blvd, Ste. 120
Madison, WI 53703
VIA Hand delivery

From: Heidi M. Wegleitner
Staff Attorney, Legal Action of Wisconsin, Inc.

RE: LAW Comments on CDA Draft ACOP

Dear Honorable Commissioners:

Legal Action restates all positions set forth in its February and April, 2013 comments unless specifically modified herein. The following outline is intended to highlight some of the key issues in a straight-forward manner for your convenience.

Background

The ACOP applies to applicants to and tenants of CDA of Madison's public housing.

- CDA is required by federal law to establish policies in areas where the federal government (HUD) has provided it with discretion in administering its federally funded housing programs.
- CDA has ample discretion in determining who gets approved and admitted for housing.
- CDA has ample discretion in determining who gets kicked-out (evicted) from housing.
- CDA has ample discretion over how the property is managed.

It is imperative for CDA to set forth clear policies regarding how it will exercise its discretion so staff and applicants and tenants understand their rights and responsibilities and can be assured that decisions are not made in an arbitrary or unfair manner. Policies should provide clear instruction to CDA staff, be fair to applicants and tenants and understanding of the real-life challenges faced by low-income persons in need of affordable housing in Madison.

Apply all Madison Fair Housing Laws to CDA (2-4)

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Legal Action recommends that CDA specifically state that it is covered by all local fair housing ordinances unless they specifically conflict with federal law. There are many local protections in addition to state and federal laws that expand equal access to housing.

### **Don't Make It Even More Difficult for Low-Income Folks to Get Into Housing**

The proposed ACOP removes waitlist preferences (get to go to the top) for domestic violence victims and homeless people.

The proposed ACOP makes it extremely difficult for any of the following to get in to CDA Housing:

- Families with members who have a record of arrests, police contacts or criminal charges or convictions
- Families who may have bad credit
- Families who may have had an eviction filed against them
- Families who have negative landlord references

### **Mitigate Impact of Racial Disparities - Consider Only Reliable Evidence of Criminal Activity (Section 3.III.C)**

Legal Action recommends that CDA only consider criminal convictions as evidence of criminal activity because it is more reliable than the other types of evidence and will reduce the negative impact in housing of racial disparities in arrests and police contacts.

### **Maintain Language Protecting Lawful Rent Abatement and Applicants with High Rent Burdens (existing ACOP at 2-14)**

Proposed policies remove protections for: (1) persons who were abating (deducting from) their rent under a local ordinance because a previous landlord failed to make repairs and (2) persons who had trouble paying rent even though rent was more than 50% of their monthly income.

Language to be removed: *"Applicants will not be considered to have a poor credit history if they were late paying rent because they were withholding rent due to substandard housing conditions in a manner consistent with a local ordinance; or had a poor rent paying history clearly related to an excessive rent relative to their income (using 50% of their gross income as a guide,) and responsible efforts were made by the family to resolve the nonpayment problem."*

### **Denying for Bad Credit (3-25)**

Legal Action recommends that they make a policy that they will not deny for bad credit for debts that are unrelated to housing and utilities. Legal Action also recommends that they make

a policy that they will not deny based on debts that are disputed, repaid, or being repaid pursuant to a payment plan.

### **Improve Policies for Existing Tenants**

#### **Self-certifying Household Members when other Evidence cannot be Obtained (7-17)**

Proposed policies make it hard to prove that someone accused of living with you does not live with you if they don't cooperate and/or don't have another lease to prove a different address. (Persons who are homeless, abusive, or out of touch) because it requires you to prove with a separate document (like a different lease) that they live somewhere else.

Legal Action recommends that the family be able to self-certify that the person isn't in the household if other documentation cannot be obtained.

#### **Repayment Plans (8-9, 8-10)**

They don't give tenants the *right to a repayment plan* when charged for repairs or damages.

Legal Action recommends providing the *right to an affordable repayment plan* so tenants are not evicted for charges that they cannot afford to pay.

#### **Limiting Guests (Section 3-I.J.)**

They reduce number of days CDA tenants can have guests to 7 days in a row and 14 days in a year.

Legal Action recommends 14 days in a row or 45 days total in a year because that is a guest policy that is more reasonable and in line with industry standards. See attached court decision from California which discusses a 14/45 guest policy in a Section 8 Administrative Plan at the bottom of page 3.

#### **Right to Have Family Visit (3-33)**

If a household member is removed from the application (because they have a criminal record, for example that would result in the whole family being denied), the CDA is requiring that the family certify that the family member will never be able to visit or stay with them as a guest.

Legal Action recommends that the person be allowed to visit, but if they don't follow the rules as the guest and engage in behavior that could get them "banned", the CDA could take steps to "ban" them like anyone else.

APR - 4 2013

SUPERIOR COURT OF THE STATE OF CALIFORNIA

JOHN A. CLARKE, CLERK  
*n. officio*

FOR THE COUNTY OF LOS ANGELES BY N. DIGIAMBATTISTA, DEPUTY

Mary Dominguez,	)	Case No. BS138646
Petitioner,	)	
	)	
v.	)	<del>[Tentative]</del>
	)	<b>Decision and Order</b>
Baldwin Park Housing Authority, et al.	)	<b>Granting Writ of Mandate</b>
<u>Respondents.</u>	)	

Petitioner Mary Dominguez ("Petitioner") seeks a writ of mandate pursuant to Code of Civil Procedure section 1094.5 commanding Respondent Baldwin Park Housing Authority ("BPHA") and its Executive Director, Respondent Vijay Singhal, (collectively, "Respondents"), to set aside their decision terminating her from the Section 8 rental housing assistance program.

Having reviewed the pleadings, the administrative record, and the parties' briefs, the Court rules as follows:

**Factual and Procedural Background**

Petitioner lives at 4271 La Rica Avenue in Baldwin Park, California, with her three minor children. (AR 1, 6). She receives rental assistance under the so-called "Section 8" housing program administered by BPHA. (Id.).

On February 16, 2012, BPHA received an anonymous telephone call complaining that a neighbor noticed holes on Petitioner's walls, police officers had gone to Petitioner's home, Petitioner's boyfriend was out on parole, and there was drug activity at Petitioner's home. (AR 61). As a result of this anonymous call, BPHA's Housing Manager, Suzie Ruelas, required Petitioner to attend a counseling session on February 22, 2012. (AR 17, 62). During the counseling session, Petitioner stated that Jesus Vargas, the father of her youngest daughter, did not live with her at the home. (AR 6, 18). Petitioner also stated that Vargas was a gang member and on parole. (AR 18). To confirm that Vargas was not living with her, Petitioner asked Ruelas to call Vargas' probation officer. (AR 18). However, no one at BPHA called Vargas' parole officer to confirm his residence. (AR 18). Petitioner also stated that her adult son sometimes visited her but does not live with her because he causes problems and abuses alcohol. (AR 18).

After the counseling session, Petitioner told Vargas that he could not even visit her at the home. (AR 33). Instead, they would meet at a local park or go out to dinner. (AR 34). Indeed, Petitioner told Vargas "it's not safe to come over because if anything goes wrong, I'm gonna be held responsible for your problems." (AR 34).

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On April 23, 2012, BPHA received another anonymous call complaining that Petitioner allowed gang members in her home and was living with her boyfriend. (AR 19, 63). Based on this call, BPHA conducted an unannounced inspection of Petitioner's home on the same day. (Id.). Two BPHA inspectors, "Rocio and Luis," and a police officer, Arthur Lopez, were present during the inspection. (AR 41, 63). Although Petitioner was not present during the inspection, Theresa Amaya and her boyfriend (Randy Valencia) were present at her home. (AR 26-28, 97). After being reached by telephone, Petitioner consented to the inspection. (AR 63). Amaya's brother was the father of one of Petitioner's children. (AR 63). At the time of the inspection, Amaya and Valencia had stayed at Petitioner's home for one night. (AR 44-45). Amaya and Valencia were also helping Petitioner with certain chores. (AR 41-42, 52-53, 63). At some point during the inspection, Valencia left the home. (AR 38, 42, 63). BPHA's inspectors took photographs of Petitioner's home and certain toiletries and clothing. (AR 63-84). There is no evidence in the record to corroborate the anonymous caller's assertion that there were gang members at Petitioner's home on or about April 23, 2012.

After the inspection, BPHA served Petitioner with a May 10, 2012 Notice of Proposed Termination from the Section 8 program ("Notice"). (AR 1-4). The Notice stated, among other things, that Petitioner had allowed an unidentified "adult male to move into [her] assisted unit and failed to report this to the BPHA." (AR 2). The Notice also accused Petitioner of failing to maintain good housekeeping habits, damaging or destructing the unit, and disrupting her neighbors. (Id.).

Petitioner challenged the proposed termination and requested a hearing. (AR 6-9). An informal hearing was held on June 6, 2012 before Hearing Officer Helen Hernandez, an employee for the City of Baldwin Park. (AR 11-13). After the hearing, Hearing Officer Hernandez issued a decision upholding the BPHA's termination of Petitioner's Section 8 rental assistance. (AR 111-113). In her decision, the Hearing Officer concluded that BPHA had proven that Petitioner allowed an unauthorized individual to live at the residence, failed to maintain good housekeeping habits, damaged the unit, and was disruptive to her neighbors. (AR 113). The BPHA's determination became final on July 31, 2012. (AR 116). This lawsuit followed.

### **Standard of Review**

Section 1094.5 of the Code of Civil Procedure governs judicial review by administrative mandate of any final decision or order rendered by an administrative agency. A trial court's review of an adjudicatory administrative decision is subject to two possible standards of review depending upon the nature of the right involved. Code Civ. Proc., § 1094.5, subd. (c). If the administrative decision substantially affects a fundamental vested right, the trial court must exercise its independent judgment on the evidence. Strumsky v. San Diego County Employees Retirement Assn., (1974) 11 Cal.3d 28, 32; Bixby v. Pierno, (1971) 4 Cal.3d 130, 143. The trial court must not only examine the administrative record for errors of law, but must also conduct an independent review of the entire record to determine whether the weight of the evidence supports the administrative findings. Bixby v. Pierno, *supra*, at p. 143. If, on the other hand, the

administrative decision neither involves nor substantially affects a fundamental vested right, the trial court's review is limited to determining whether the administrative findings are supported by substantial evidence. Strumsky v. San Diego County Employees Retirement Assn., *supra*, at p. 32; Bixby v. Pierno, *supra*, at p. 144.

Here, both sides agree that the Court should exercise its independent judgment on the evidence. See Wences v. City of Los Angeles, (2009) 177 Cal. App. 4th 305, 313-319. Under the independent judgment standard, "the trial court not only examines the administrative record for errors of law, but also exercises its independent judgment upon the evidence disclosed in a limited trial de novo." Bixby, *supra*, 4 Cal. 3d at 143. The trial court has the power to "draw its own reasonable inferences from the evidence" and to make its own credibility determinations. Morrison v. Housing Authority of the City of Los Angeles Bd. Of Comm'ners, (2003) 107 Cal. App. 4th 860, 868. In short, the court substitutes its own judgment for that of the agency regarding the basic findings of fact and witness credibility. Guymon v. Bd. Of Accountancy, (1976) 55 Cal. App. 3d 1010, 1016. However, the court must still grant administrative findings a "strong presumption of correctness" and the party challenging the administrative findings bears the burden of demonstrating that the administrative findings were "contrary to the weight of the evidence." Fukuda v. City of Angels, (1999) 20 Cal. 4th 805, 816-817.

### Analysis

"The Section 8 program provides housing assistance to low-income families. More specifically, it is a rent subsidy plan under which owners of existing private housing receive payments on behalf of low-income tenants. The program is financed by the federal government, regulated by HUD, and administered by local [housing authorities], such as the [BPHA]. . . . 'The federal policy of providing decent, safe and sanitary housing for all families, first articulated in the United States Housing Act of 1937 . . . has inspired numerous programs designed to increase the availability of housing for lower income families. The Section 8 lower income housing assistance program, which was enacted as part of the Housing and Community Development Act of 1974 . . . is one of the most ambitious of these efforts. [The Section 8] program was enacted for the dual purposes 'of aiding lower-income families in obtaining a decent place to live and of promoting economically mixed housing.' . . . Section 8 was designed to achieve these goals by providing rent subsidies to lower income families living in housing owned primarily by private developers.'" Baggett v. Hous. Auth., (1987) 195 Cal. App. 3d 383, 386-389.

HUD's regulations do not prohibit Section 8 participants from having guests. See Basco v. Machin, 514 F.3d 1177, 1179 (11th Cir. 2008) (HUD regulations prohibit the presence of an unauthorized resident in assisted units, but do not prohibit a participant from having house guests). Indeed, BPHA's Administrative Plan states that a "guest can remain in the assisted unit no longer than 14 consecutive days or 45 cumulative calendar days during any 12-month period." (Exhibit I, p. 29, ¶ 3-1.J, to Respondents' Opposition). While BPHA's Administrative Plan also states that the head of household must provide written notification to BPHA of the guest, there is no indication as to when that notification must

be provided. (Id.). In any event, Petitioner was not accused of violating the guest notification provision. (See AR 1-4).

The housing authority has the burden of persuasion in Section 8 termination hearings and must initially present sufficient evidence to establish a prima facie case that Petitioner violated her Section 8 obligations in a manner justifying termination. Sanders v. Sellers-Earnest, 768 F. Supp. 2d 1180, 1185-1186 (M.D. Fla. 2010). Thereafter, the Section 8 participant has the burden of production to show that the individual is a visitor. Id.

Petitioner contends that the weight of the evidence does not support a finding that an adult male lived at Petitioner's home in violation of 24 C.F.R. § 982.551. Petitioner also contends that the Hearing Officer's "secondary findings" that she was disruptive to her neighbors, did not maintain good housekeeping habits, and damaged the home, are not supported by the evidence. In their opposition brief, Respondents abandoned the "secondary findings" as a basis for terminating Petitioner's rental housing assistance payments. (Respondents' Opposition, p. 12, n. 2). However, Respondents argue that the weight of the evidence shows that Petitioner was terminated from the Section 8 program for improperly allowing an adult male to live at her home.

The weight of the evidence does not show that Petitioner allowed an adult male to live at her home. Here, there is no competent or persuasive evidence in the record that anyone saw an adult male stay overnight at Petitioner's home, let alone for more than 14 consecutive days or 45 cumulative calendar days during any 12-month period as allowed for the guests of Section 8 participants under BPHA's Administrative Plan. (Exhibit 1, p. 29, to Respondents' Opposition). Even the anonymous, multiple-level hearsay evidence relied on by BPHA, the "Notes and To Do List" created on February 16, 2012 and April 23, 2012, does not support this contention. For example, the February 16, 2012 Notes and To Do List entry does not state that an adult male was staying overnight at Petitioner's home. (AR 61). While the April 23, 2012 Notes and To Do List entry states that the anonymous caller complained about Petitioner having her boyfriend live with her at her home, there is no indication of how long this had been observed, how the caller knew the person was Petitioner's boyfriend, or the basis for the caller's statement. (AR 63). The April 23, 2012 caller also did not provide a description of the individual identified as Petitioner's alleged boyfriend. (AR 63). Put another way, the "Notes and To Do List" entries created on February 16, 2012 and April 23, 2012 are not competent or persuasive evidence that Petitioner had an adult male living with her at her home in violation of the Section 8 family obligations set forth in 24 C.F.R. § 982.551.(b)(2), (b)(4), and/or (h)(2).

Assuming for the sake of argument that Respondents met their initial burden of persuasion that Petitioner violated her Section 8 obligations in a manner justifying termination, Petitioner met her burden of production of showing the adult males referenced by BPHA were visitors and not residents. First, the only adult male that stayed overnight at Petitioner's home was Valencia, not Vargas, and Valencia only spent one night at the home. (AR 43-45, 68, 71, 78, 97). Valencia's visitor or guest status is corroborated by the fact that there was a sleeping bag and backpack at Petitioner's home.

(AR 78, 97). As for the purported male clothing and toiletries photographed by BPHA during its inspection, those items belonged to Valencia, Petitioner, or Petitioner's son. (AR 47-48, 106). Second, there was no evidence in the record that Petitioner allowed Vargas to stay overnight at her home. In fact, the evidence in the record establishes that Vargas did not live with her. (AR 29-30, 46, 54). The person seen on a bicycle by Officer Lopez was one of Petitioner's neighbors, not Vargas. (AR 40). Petitioner's contention that Vargas did not live with her is credible because she consented to the April 23, 2012 "special inspection" by BPHA and offered to provide written confirmation from Vargas' parole officer that he did not live with Petitioner. (AR 18, 63).

The Court also notes that BPHA did not call neighbors that could describe the adult male allegedly living at Petitioner's home, or police officers who were allegedly called to investigate gang activity or disturbances at Petitioner's home, as witnesses at the hearing. BPHA also did not call Vargas' parole officer to confirm his address or usual place of residence. Because Respondents had the power to produce much stronger and satisfactory evidence of Petitioner's alleged violation of the Section 8 program by allowing an adult male to live in her household, the Court views with distrust the evidence that was presented on this issue by BPHA. See Evidence Code § 412.

Finally, the alleged inconsistencies in Petitioner's evidence were minor and do not undermine Petitioner's credibility or contention that an adult male was not living at her house. For example, there is no inconsistency between Petitioner's statement that her son likes to use deodorant and body wash and her statement that she sometimes buys men's toiletries when they are on sale. (AR 48-49, 99). Similarly, evidence that Vargas lived at two other addresses in Temple City and El Monte does not support Respondents' contention that he lived with Petitioner in Baldwin Park. (AR 23-24). To the extent that Petitioner's testimony at the hearing varied from her May 16, 2012 written statement, those differences are accounted for by Petitioner's lack of sophistication, not her lack of credibility. (See, e.g., AR 30 ("I had to have people help me actually read this to me and I can do my steps.")). After reviewing Petitioner's testimony at the hearing, the Court finds that she was candid and straightforward; she was not evasive and did not hesitate before responding to questions.



Disposition

For the reasons stated above, the petition for writ of mandate is GRANTED. Judgment shall be entered ordering a writ of mandate to issue from this Court, remanding the proceedings to Respondents commanding them to set aside their decision and to reconsider their actions in light of this decision and order. Petitioner shall file and serve a proposed judgment and a proposed writ of mandate within 10 days with a proof of service showing that they were served on all parties. The administrative record shall be returned to the party who lodged it, to be preserved without alteration until the judgment is final, and to be forwarded to the Court of Appeal in the event of an appeal.

IT IS SO ORDERED.

April 4, 2013



\_\_\_\_\_  
Luis A. Lavin  
Judge, Superior Court of California  
County of Los Angeles