

## **Housing Discrimination Can Still Be Found Even With A Bad Credit Report**

A recent decision from federal court in Maryland reviews the potential liability to a real estate agent in conjunction with taking in rental applications for a rental property. In the case of *Sullivan v. Hernandez*, the Sullivans who are African-American, met with Hernandez, a real estate agent for a real estate brokerage firm about finding a rental property for them. The Sullivans completed a rental application and, after viewing a property that the Sullivans were interested in, Hernandez forwarded the rental application to the listing agent of the property. The listing agents' office obtained background information on the Sullivans as well as another potential tenant, Bagchi. The information included credit reports, rental history information and information about both applicants' employment. The report showed that Bagchi's salary was \$90,000 versus the collective salary of the Sullivans of approximately \$50,000, that the Sullivans had approximately \$27,000 in bank accounts, that there were two negative credit reports on Mrs. Sullivan's credit history. Mrs. Sullivan had one prior bankruptcy and on one occasion, Bagchi had violated a lease by vacating the premises prior to the expiration of the lease term. This information was presented to the owners of the rental property, and the owners chose to rent to Bagchi.

The court first examined the basic elements of any claim of housing discrimination. A complainant must prove the following: (1) he or she is a member of a statutorily protected class; (2) he or she applied for and was qualified to rent or purchase certain property or housing; (3) he or she was rejected; and (4) the housing or rental property remained available thereafter. In this case, the Sullivans were able to establish these elements of their claim of discrimination and the burden then shifted to the Defendants to offer a legitimate, non-discriminatory explanation in selecting Bagchi as a tenant. The owner submitted an affidavit that he selected Bagchi because of the following factors: (1) Bagchi had stronger credit history; (2) Bagchi had greater income; (3) some creditors reported that Mrs. Sullivan did not pay her debts; and (4) Mrs. Sullivan had previously declared bankruptcy. The court found that these explanations were reasonable and non-discriminatory and then the burden of proof was shifted back to the Sullivans to establish their claim of housing discrimination.

The Sullivans alleged that the explanation offered by the owner was pretextual. Under such a scenario, the complainant is to show that the explanation is unworthy of credence. In some cases, if the Defendant has different shifting rationale for justifying the activity, a jury can find that it is possibly pretextual and it can warrant a finding of housing discrimination.

In this case, the owners had offered different explanations for the determination to select Bagchi as the tenant. They had initially said there were three factors that led to their decision, Bagchi's financial and qualified status, the fact that the listing had recommended his application and that his application was received first. However, when there was some dispute over the explanations offered by the Defendants, the Defendants simply relied on the argument of Bagchi's financial status. The court found that this raised serious questions as to the Defendants' motivation and that a jury could find the legitimate, non-discriminatory explanation offered by the owner was simply pretextual, and the matter was allowed to proceed to trial before a jury.

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This case illustrates the importance in establishing consistent procedures in reviewing applications and applying a certain set policy in making a determination as to whether or not a potential applicant is approved or rejected. In this case, it appears that the Defendants did not have such set procedures as their explanations for their determination to continue to change and appear to show some lack of credibility on their part in making this decision on the rental applications.

***By Scott M. Clark, Esq.***

3008 N. 44<sup>th</sup> Street, Phoenix, AZ 85018

602.957.7877

[sclark@scottclarklaw.com](mailto:sclark@scottclarklaw.com)

<http://www.scottclarklaw.com>

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