

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA,

a municipal corporation,
400 6th Street, N.W.
Washington, D.C. 20001,

Plaintiff,

v.

JEROME BAILEY,

1926 Benning Road, N.E.
Washington, D.C. 20002,

BAILEY REAL ESTATE HOLDINGS, LLC,

1926 Benning Road, N.E.
Washington, D.C. 20002

Serve on:

Jerome Bailey

1926 Benning Road, N.E.
Washington, D.C. 20002,

BRANDON DAVIS DUKES,

306 Atlantic Street, S.E., Apt. 11
Washington, D.C. 20032,

and

1537 GALES STREET NE, LLC,

1537 Gales Street, N.E.
Washington, D.C. 20002

Serve on:

Jerome Bailey

1926 Benning Road, N.E.
Washington, D.C. 20002,

Defendants.

COMPLAINT

JURY DEMAND

Case No.:

Plaintiff the District of Columbia (the District) brings this action against Defendants Jerome Bailey, Bailey Real Estate Holdings, LLC, Brandon Davis Dukes, and 1537 Gales Street NE, LLC (collectively, Defendants) for discriminatory and unfair policies and practices that limit affordable housing and violate the District of Columbia Human Rights Act (DCHRA), D.C. Code §§ 2-1401.01, *et seq.*, and the District of Columbia Consumer Protection Procedures Act (CPPA), D.C. Code §§ 28-3901, *et seq.* In support of its claims, the District states as follows:

INTRODUCTION

1. The District of Columbia faces a housing crisis. Affordable housing stock has trended downward while rents have trended upward, and low-income tenants are squeezed out. Housing-assistance programs—short- and long-term—are a core pillar of the District’s response to these pressures. By subsidizing rent, housing assistance helps the District’s lowest-income populations avoid homelessness and maintain a foothold in private housing. This assistance is critical in a city where many tenants spend more than half of their monthly income on rent and, according to the Metropolitan Washington Council of Governments, more than 4,400 people—including 344 families—were homeless in 2022.

2. The District brings this action against Defendants—real-estate entities and professionals that own, manage, operate, and/or lease apartment units across the District—because Defendants perpetuated a scheme that limited affordable housing opportunities based on applicants’ source of income and wrongfully refused to rent based on applicants’ source of income, violating both the DCHRA and CPPA in the process.

3. Specifically, after learning that an applicant for a particular property has a housing subsidy, Defendants misrepresent that the property is no longer available to rent and instead encourage the applicant to apply to other properties in Defendants’ portfolios.

4. Defendants refuse to rent certain properties to District residents who hold long-term housing subsidies. At other properties, Defendants also refuse to rent to District residents with short-term housing subsidies (such as Rapid Re-housing vouchers), which provide critical assistance to people experiencing homelessness.

5. Defendants have posted multiple advertisements for District residential properties indicating that Defendants would not accept “temporary” housing subsidies or would prefer “permanent” vouchers over temporary subsidies, reflecting Defendants’ broader discriminatory scheme. Defendants posted these advertisements notwithstanding the pledge in their online marketing not to advertise in a way that discriminates based on source of income.

6. Defendants have also posted multiple advertisements for District residential properties stating that applicants could not have any history of evictions or payment-related court cases, deterring applicants whose eviction records or nonpayment or late payment histories may be protected from housing providers’ consideration by the DCHRA.

7. Defendants’ conduct also violates the CPPA, which prohibits deceptive and unfair trade practices by merchants in the context of consumer transactions, including landlord-tenant transactions.

8. In this case, the District seeks injunctive relief, restitution, civil penalties, costs, and attorneys’ fees to prevent and deter Defendants from engaging in discriminatory and unfair trade practices that mislead consumers and limit access to housing for vulnerable District residents.

JURISDICTION

9. The Attorney General for the District of Columbia brings this action on behalf of the District of Columbia to uphold the public interest and enforce District law, including the DCHRA. *See* D.C. Code § 2-1403.16a.

10. The Attorney General also has authority to bring this action under D.C. Code § 28-3909 where there is reason to believe that a merchant is using or intends to use a business practice that violates the CPPA.

11. This Court has subject matter jurisdiction over the claims and allegations in the Complaint. *See* D.C. Code § 11-921(a).

12. This Court has personal jurisdiction over Defendants because Defendants own property, have caused tortious injury by violating the DCHRA and CPPA, and transact business in the District. *See* D.C. Code § 13-423. The Court also has personal jurisdiction over Bailey Real Estate Holdings, LLC and 1537 Gales Street NE, LLC because they are incorporated in the District of Columbia. *See* D.C. Code § 13-422.

PARTIES

13. Plaintiff the District of Columbia, a municipal corporation, is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General conducts the District's legal business and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1); *District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d 412 (D.C. 2017). The Attorney General is also expressly authorized to enforce the District's human rights and consumer protection laws. *See* D.C. Code §§ 2-1403.16a; 28-3909.

14. Defendant Jerome Bailey (Bailey) is an unlicensed District real estate professional and is identified on the District of Columbia Regulatory Affairs (DCRA) website as an owner of Bailey Real Estate Holdings, LLC and 1537 Gales Street NE, LLC.

15. Defendant Bailey Real Estate Holdings, LLC (Bailey Real Estate) is a District limited liability corporation providing property management services in the District. On its website, Bailey Real Estate describes itself as “a leader in the multifamily affordable housing industry in the DC area.”

16. Defendant Brandon Davis Dukes (Davis Dukes) is an unlicensed District real estate professional and is associated with Bailey, Bailey Real Estate, and 1537 Gales Street NE, LLC.

17. Defendant 1537 Gales Street NE LLC (1537 Gales) is a District limited liability corporation that owns the residential real property located at 1537 Gales Street N.E., Washington, D.C. 20002 (the Property). The DCRA identifies Bailey as the owner of 1537 Gales.

FACTS

Housing Assistance and the Rental Housing Market in the District

18. The ability to access affordable housing free from discrimination is District residents’ top civil rights concern.

19. Housing-assistance programs are a core pillar of the District’s response to the growing affordable-housing crisis.

20. Housing assistance offers a critical lifeline to the District’s poorest residents; it helps those experiencing homelessness to move out of temporary shelters and allows other cash-strapped households to reallocate spending to necessities like food and transportation.

21. Housing assistance is particularly crucial in the District, where high rents consume a disproportionate share of household expenditures. In 2018, more than 23% of the District’s tenant households spent more than half of their monthly income on rent. In recent years, the District’s rental housing market has become more expensive while the availability of affordable rental

housing has plunged. Housing assistance is thus increasingly important to low-income District tenants seeking to obtain affordable housing and navigate the city’s high cost of living.

22. There are many housing-assistance programs in the District, including both long-term and short-term subsidy programs.

23. The United States Department of Housing and Urban Development (“HUD”) administers the federally-funded Housing Choice Voucher Program (HCVP). HCVP is a successor to the Section 8 Rental Voucher Program, and Housing Choice Vouchers are still commonly referred to as Section 8 vouchers.

24. In the District, HCVP vouchers are locally administered by the District of Columbia Housing Authority (DCHA). HCVP vouchers are tenant-based subsidies that enable participants to rent housing on the private market at market rates. HCVP participants pay a portion of the rent based on a percentage of their household income, and DCHA pays the remainder of the rent directly to the landlord. HCVP vouchers may be renewed indefinitely so long as the voucher holder remains eligible and enrolled in the program.

25. Along with HCVP, District housing assistance options include many other housing vouchers, subsidies, and assistance programs, and each type of subsidy varies in duration and renewability.

26. Online advertising is an essential part of searching for rental housing. Many tenants in the District—including those who receive housing assistance—rely on online housing advertisements to locate rental housing. Discriminatory advertisements create permanent and significant harm in the rental market each day they are visible. Unlike temporary notices such as “no one-bedroom units available,” warnings like “no vouchers accepted” send a lasting message to tenants with subsidies, permanently discouraging them from pursuing that housing opportunity.

**Defendants Discriminated Against District Residents
Based on Source of Income in Multiple Ways**

27. Defendants are District real estate professionals, owners, and property management providers.

28. Defendants accept some housing subsidies as rental payments at some of their District residential rental units.

29. However, Defendants refuse to rent certain properties to long-term subsidy holders and refuse to rent to short-term subsidy holders entirely.

30. On multiple occasions, Defendants represented that a rental unit was available but upon learning that a person inquiring about the unit had a housing voucher, Defendants misrepresented to the housing voucher holder that the unit was no longer available and instead sent the housing voucher holder information for other properties in Defendants' portfolios.

31. For example, on or about July 3, 2020, Jane Doe (a pseudonym), a District housing voucher holder through HCVP, used the online housing platform Zillow to request a tour of a unit advertised at the Property. Ms. Doe did not indicate she had a voucher in her initial inquiry.

32. That same day, Bailey provided Ms. Doe with a virtual tour link for unit #5 of the Property and offered an in-person tour.

33. Bailey connected Ms. Doe with Davis Dukes, who scheduled a tour with her for later that day.

34. Ms. Doe toured the unit with Davis Dukes on July 3, 2020.

35. During the tour, Ms. Doe informed Davis Dukes that she had a housing voucher.

36. Ms. Doe noticed that Davis Dukes made an unpleasant facial expression in response to this information but asserted that vouchers would be accepted.

37. At the end of the tour, Davis Dukes told Ms. Doe that he would send the tenancy application as soon as he reached his next destination that same day.

38. Davis Dukes did not send Ms. Doe the tenancy application.

39. Instead, after her tour, Davis Dukes called Ms. Doe and told her that he had received a “really strong” application for the unit and that Ms. Doe could apply for another unit in a property in Southeast instead.

40. Ms. Doe viewed the unit in Southeast online, which looked to be in worse condition than the unit she had toured.

41. Additionally, on July 20 and 21, 2020, the Equal Rights Center (ERC), a District-based housing justice non-profit organization, conducted a matched-pair test of the unit at the Property.

42. To test Defendants’ conduct, ERC employed two testers, one posing as a housing voucher holder (Subsidized Tester) and the other posing as a non-housing voucher holder (Unsubsidized Tester).

43. On July 20, 2020, the Subsidized Tester called Bailey, who confirmed that the unit at the Property was still available.

44. After the Subsidized Tester disclosed to Bailey on the phone that she would be using a housing voucher, Bailey told the Subsidized Tester that she would need a minimum credit score of 650, no evictions on her record, a favorable landlord reference, and no criminal record to rent the unit.

45. The Subsidized Tester asked Bailey how to get an application, and Bailey replied that he would want her to view the unit first.

46. That same day, following the phone call, Bailey sent the Subsidized Tester a text message with a link to Defendants' available rental units. None of the listed units included units at the Property.

47. Bailey also sent the Subsidized Tester the suggestion that she apply for a unit at 1633 E Street N.E. because "the approval requirements are not as strict and there is no application."

48. That evening, Davis Dukes sent the Subsidized Tester a text message asking about her move-in date and whether her housing voucher was "permanent."

49. On the morning of July 21, 2020, the Subsidized Tester responded to Davis Dukes that she had a permanent housing voucher. Davis Dukes then asked if she had availability to tour some units that day.

50. That same day, the Subsidized Tester responded to Davis Dukes and asked which units she could tour and if she could tour the unit at the Property. In response, Davis Dukes said "no" and suggested two other apartment buildings in the District.

51. The Subsidized Tester then asked Davis Dukes over text message if the unit at the Property had been rented, to which Davis Dukes responded "yes" at 1:03 p.m.

52. Shortly before noon on July 21, 2020, ERC's Unsubsidized Tester called Bailey and inquired about unit #5 at the Property. Bailey told the Unsubsidized Tester that there were two units available at the Property and asked if she wanted to take a tour.

53. In response to the Unsubsidized Tester's question about income and credit requirements, Bailey told her that Defendants were looking for someone who can "generally pay the bills," with a credit score between 620 and 650.

54. The Unsubsidized Tester told Bailey she believed her credit score to be between 600 and 620, to which Bailey responded that he would need to review her full credit report and verify that she had not had any evictions or bankruptcies.

55. The Unsubsidized Tester asked Bailey if she could have an application to rent the unit and Bailey said he would send her the application via email.

56. That afternoon, Bailey sent the Unsubsidized Tester a rental application and a link to a virtual tour of the Property.

57. The Unsubsidized Tester text messaged Bailey asking when she could tour the two units at the Property, to which Bailey replied at 2:02 p.m., “We are available at your convenience.”

58. Bailey’s message to the Unsubsidized Tester confirming the availability of not one but *two* units at the Property came approximately one hour after Davis Dukes told the Subsidized Tester that unit #5 had been rented.

59. Finally, Defendants also represented through another agent that, while they accept permanent housing vouchers at some locations, they do not accept housing subsidies at the Property and do not accept short-term housing subsidies at any property.

60. Specifically, on September 17, 2021, in response to an inquiry by an affordable housing caseworker through Zillow to tour the Property, an agent of Defendants stated, “unfortunately the unit located on 1537 Gales St NE is a Market Unit and does not accept housing vouchers for rental.”

61. Defendants’ agent then stated that Defendants “are accepting permanent subsidy housing vouchers from [DHS, DBH, Housing Choice Voucher, Housing-Up Subsidy, Community Connections, & Catholic charities (if permanent)] which I can send over for your reference.” (brackets in original).

62. Defendants' (1) refusal to rent the Property to subsidy holders; (2) refusal to rent any location to short-term subsidy holders; (3) differential rental terms and conditions for subsidy holders; and (4) false representations about the availability of rental units all violate the DCHRA's prohibition on source-of-income discrimination.

63. Defendants' policies and practices restricting subsidy holders' ability to rent the Property and misrepresentations about the availability of rental properties also violate the CPPA's prohibition on unlawful trade practices.

Bailey and Bailey Real Estate's Discriminatory Statements and Advertising

64. Bailey Real Estate maintains a website at baileyreholdings.com. The website includes the "Equal Opportunity Housing" logo, indicating that they are an Equal Opportunity Housing provider. The website also includes a listing of purportedly available units, which each contain a brief description of the neighborhood the property is located in and a photo of the exterior of the property. The Bailey Real Estate website listings do not include details about the units available or the qualification requirements.

65. Bailey and Bailey Real Estate also advertise available housing on third-party online platforms such as Zillow, Trulia.com, and AffordableHousing.com. Zillow (and Trulia, one of its registered Trademarks) is the leading real estate and rental website in the United States and receives approximately 36 million visits per month. AffordableHousing.com describes itself as the largest and most trusted source for affordable housing in the United States.

66. Bailey and Bailey Real Estate's advertised units on Zillow, Trulia, and AffordableHousing.com include 1755 Galen St. S.E., 2309 Green St. S.E., 5210 Just St. N.E., 422 Chesapeake St. S.E., and 940 Division Ave. N.E., all in Washington, D.C. The listings on these

third-party sites contain significantly more detail than the listings on the Bailey Real Estate website.

67. More than 25 advertisements, for nearly 20 properties, state at the top of the text description that “Permanent Voucher Holders are welcomed.” These advertisements then list specific providers of vouchers: DCHA, DHS, and Community Connections.

68. Zillow advertisements for at least five different properties also state under “Special features” that the unit “Accepts applicants with section 8 vouchers.”

69. By specifying that they welcome or accept “permanent” or “Section 8” voucher holders, Bailey and Bailey Real Estate’s advertisements communicate to prospective tenants that “temporary” vouchers and other short-term housing subsidies, such as Rapid Re-housing, are not preferred or would not be accepted, in violation of the DCHRA’s protection against discrimination based on source of income. These advertisements are consistent with Bailey and Bailey Real Estate’s practice, as detailed above, of not accepting short-term housing subsidies or other non-“permanent” forms of housing assistance.

70. Bailey and Bailey Real Estate also posted more than 20 advertisements for different properties on Zillow, Trulia, and AffordableHousing.com stating that their “General Requirements” include “No evictions or payment related court cases.”

71. Bailey and Bailey Real Estate’s statements that they do not accept applicants with prior evictions or payment-related court cases violate the DCHRA’s protection against

discrimination based on any applicant's sealed eviction record and subsidy holders' prior nonpayment or late payment rental histories.

72. The advertisements described above were posted as recently as December 2022.

73. In light of these discriminatory practices, Bailey and Bailey Real Estate's advertisements also violate the CPPA, as they discriminate based on protected classifications in violation of the DCHRA.

CAUSES OF ACTION

COUNT I

DISCRIMINATORY REFUSALS TO TRANSACT, DIFFERENTIAL TERMS, AND FALSE REPRESENTATIONS IN VIOLATION OF THE DCHRA, D.C. CODE § 2-1402.21(a)(1). (All Defendants)

74. All prior paragraphs in the Complaint are repeated and incorporated here.

75. Under the DCHRA, it is an "unlawful discriminatory practice" to "refuse or fail to initiate or conduct any transaction in real property; or to require different terms for such transaction; or to represent falsely that an interest in real property is not available for transaction" where such conduct is "wholly or partially ... based on the actual or perceived ... source of income ... of any individual." D.C. Code § 2-1402.21(a)-(a)(1).

76. Housing vouchers and subsidies are a source of income under the DCHRA. D.C. Code § 2-1402.21(e); *See* OHR Guidance No. 16-01 (stating that source of income includes "short- and long-term rental subsidies" including but not limited to vouchers such as "Rapid Re-housing").

77. Defendants' policies and practices of refusing to accept short-term subsidies as rental payments constitute discriminatory refusals to conduct a transaction in real property based on source of income and violate the DCHRA, D.C. Code § 2-1402.21(a)(1).

78. Defendants' policies and practices of refusing to accept long-term subsidies as rental payments for certain properties constitute discriminatory refusals to conduct a transaction in real property based on voucher participants' source of income and violate the DCHRA, D.C. Code § 2-1402.21(a)(1).

79. Defendants' different qualification requirements for subsidy holders to apply to rent housing units compared to non-subsidy holders constitute differential treatment and violate the DCHRA, D.C. Code § 2-1402.21(a)(1).

80. Finally, Defendants' false representation about the availability of residential real property for rent based on the inquiring party's source of income violates the DCHRA, D.C. Code § 2-1402.21(a)(1).

81. All Defendants were aware of and/or responsible for this discriminatory conduct and have violated the DCHRA.

COUNT II
DISCRIMINATORY STATEMENTS AND
ADVERTISEMENTS IN VIOLATION OF THE DCHRA,
D.C. CODE § 2-1402.21(a)(5) AND (g)(1)(A).
(Jerome Bailey, Bailey Real Estate Holdings, LLC, and 1537 Gales Street NE, LLC)

82. All prior paragraphs in the Complaint are repeated and incorporated here.

83. Under the DCHRA, it is an "unlawful discriminatory practice" to make "any . . . statement, or advertisement, with respect to a transaction, or proposed transaction, in real property . . . [that] unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on [the] . . . source of income [or] sealed eviction record . . . of any individual." D.C. Code § 2-1402.21(a)(5).

84. Bailey, Bailey Real Estate, and 1537 Gales's statements to prospective tenants that housing vouchers are not accepted at 1537 Gales Street N.E., Washington, D.C. 20002 violate the DCHRA, D.C. Code § 2-1402.21(a)(5).

85. Under the DCHRA, it is also an "unlawful discriminatory practice" to make "any . . . statement, or advertisement, with respect to a transaction, or proposed transaction, in real property . . . [that] unlawfully indicates or attempts unlawfully to indicate any preference, limitation, or discrimination based on" a history of nonpayment or late payment of rent, if the prospective tenant has a housing subsidy and the nonpayment or late payment occurred prior to receiving a subsidy, or based on sealed eviction records. D.C. Code §§ 2-1402.21(a)(5), 2-1402.21(g)(1)(A), 2-1402.21(h).

86. Bailey and Bailey Real Estate's advertisements indicating unlawful preferences, limitations, or discrimination based on source of income, a history of nonpayment or late payment of rent, and sealed eviction records violate the DCHRA, D.C. Code §§ 2-1402.21(a)(5), 2-1402.21(g)(1)(A), 2-1402.21(h).

87. Bailey and Bailey Real Estate were responsible for marketing of and communications regarding residential rental units owned, managed, operated, or leased by Bailey or Bailey Real Estate.

88. Additionally, Bailey, Bailey Real Estate, and 1537 Gales are responsible for statements regarding the availability, leasing, operation, and management of rental residential units at 1537 Gales Street N.E., Washington, D.C. 20002, and are all responsible for these violations of the DCHRA.

COUNT III
MISREPRESENTATIONS IN VIOLATION OF
THE CONSUMER PROTECTION PROCEDURES ACT, D.C. CODE § 28-3904.
(All Defendants)

89. All prior paragraphs in the Complaint are repeated and incorporated here.

90. The CPPA prohibits merchants from engaging in unfair or deceptive trade practices in connection with a transaction for consumer goods and services. D.C. Code § 28-3904.

91. Specifically, the CPPA prohibits any person from engaging in deceptive trade practices, including by:

a. “represent[ing] that goods ... have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have,” D.C. Code § 28-3904(a); and

b. “misrepresent[ing] as to a material fact which has a tendency to mislead,” D.C. Code § 28-3904(e).

92. The rental housing that Defendants offer is for personal, household or family purposes and, therefore, is a consumer good and service. D.C. Code § 28-3901(a)(7) (noting that consumer goods or services includes “real estate transactions”).

93. Defendants, in the ordinary course of business, supply consumer goods and services and therefore are “merchants” under the CPPA. D.C. Code § 28-3901(a)(3).

94. District residents or other individuals who sought to rent Defendants’ rental housing properties are “consumers” under the CPPA because they are persons who “would [] lease [] consumer goods,” such as the rental housing properties offered by Defendants. D.C. Code § 28-3901(a)(2).

95. Defendants' representations—including Defendants' misrepresentation about the availability of particular rental units and Bailey and Bailey Real Estate's false representations that they are an Equal Opportunity Housing provider—are misrepresentations either about material facts or that Defendants' goods or services have a source, sponsorship, approval, certification, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have, and therefore violate the CPPA, D.C. Code § 28-3904(a), (e).

COUNT IV
UNLAWFUL TRADE PRACTICES
CONTRARY TO DISTRICT LAW IN VIOLATION OF THE CONSUMER
PROTECTION PROCEDURES ACT, D.C. CODE § 28-3904.
(All Defendants)

96. All prior paragraphs in the Complaint are repeated and incorporated here.

97. The CPPA prohibits any person from engaging in unfair or deceptive trade practices, including trade practices that, though not separately enumerated under D.C. Code § 28-3904, violate other District of Columbia law.

98. Defendants have engaged in unlawful, unfair, and deceptive practices affecting District consumers in violation of the CPPA, D.C. Code § 28-3904, by engaging in trade practices that violate the District of Columbia's anti-discrimination laws.

PRAYER FOR RELIEF

WHEREFORE, the District requests that this Court enter judgment in its favor and grant relief against Defendants as follows:

- (a) Injunctive and declaratory relief;
- (b) Restitution and damages;
- (c) Civil penalties;
- (d) The District's reasonable attorney's fees and costs; and
- (e) Such other and further relief as this Court deems appropriate based on the facts and applicable law.

JURY DEMAND

The District of Columbia demands a jury trial by the maximum number of jurors permitted by law.

Dated: March 7, 2023

Respectfully submitted,

BRIAN L. SCHWALB
Attorney General for the District of Columbia

JENNIFER C. JONES
Deputy Attorney General
Public Advocacy Division

/s/ Alicia M. Lendon

ALICIA M. LENDON [1765057]
Chief, Civil Rights & Elder Justice Section
Public Advocacy Division

/s/ Samantha Hall

SAMANTHA HALL [1014735]
JESSICA E. FEINBERG [1779664]
Assistant Attorneys General
400 Sixth Street, N.W., Suite 10100
Washington, D.C. 20001
(202) 788-2081
(202) 735-6637
samantha.hall@dc.gov
jessica.feinberg@dc.gov

Attorneys for the District of Columbia