

HAVEN ROCK, LLC  
*Petitioner,*

v.

BALTIMORE CITY DEPARTMENT  
OF FINANCE  
*Respondent*

IN THE MARYLAND TAX COURT

21-MI-OO-0543

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### MEMORANDUM AND ORDER

Respondent (“City”) has filed a Motion to dismiss questions three and four from the Petitioner’s (“Haven Rock”) appeal due to failures to state claims upon which relief can be granted. In question three, Petitioner (“Haven Rock”) states a claim under the federal Fair Housing Act (“FHA”) and in question four, Haven Rock claims a violation of equal protection rights under federal and state law (“EPR”).<sup>1</sup> For the reasons discussed below, the Motion is denied.

### FACTUAL BACKGROUND

In this case, Haven Rock challenges the City’s denial of a High-performance market-rate rental housing tax credit (“credit”) under Baltimore City Code Art. 28, § 10-18 for the project called Haven Overlook. The City’s decision stated that Haven Rock did “NOT meet the eligibility requirements for the tax credit” because “[t]he High-Performance Market-Rate Rental Housing – Citywide Tax Credit is limited to traditional multifamily buildings that include several dwelling units within one building situated on the same lot.” Haven Rock believes that extralegal requirements outside the plain language of the statute created its lack of eligibility.

In its petition of appeal, Haven Rock cites four independent grounds for relief: the City’s decision violates Article 28, § 10-18 of the Baltimore City Code; the City’s denial was arbitrary,

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<sup>1</sup> Questions Three and Four stated in the petition are: Did Respondent violate the Fair Housing Act in denying Petitioner’s application for the Tax Credit; and Did Respondent violate Petitioner’s equal protection rights under federal and state law by treating Petitioner differently than similarly situation Baltimore City developers?

capricious, and procedurally improper; the City's decision violated the FHA; and the City's decision violated Haven Rock's EPR. With respect to item three, Haven Rock plead in its petition the following:

*Third*, if Respondent's ruling is left undisturbed, it will have a disparate impact on Baltimoreans that the Tax Credit legislations sought to protect. The "goal" of the Tax Credit program "is to help grow Baltimore's residential population in an environmentally sensitive manner." Baltimore City Code, Art 28, § 10-18(b). Baltimore City lacks new, environmentally sensitive townhomes-style rental units with three or more bedrooms and enclosed yards for pets, which are optimal for families. This rental unit typology promotes the equal treatment of Baltimore's minority communities. Available data indicates Black and Latino Baltimoreans are more than twice as likely as White Baltimoreans to live in rental housing, and Black and Latino Baltimoreans are more than twice as likely to live in households with children than White Baltimoreans. By concluding that the Tax Credit is limited to rental projects within "traditional" multi-family apartment buildings, *i.e.*, high rise apartment buildings, Respondent is discouraging familial rental housing projects for Baltimoreans most in need of them. This practice violates the Fair Housing Act.

Petition of Appeal ¶47.

With respect to item four, Haven Rock plead in its petition the following:

*Fourth*, Respondent's singling out of Petitioner by denying its Project the Tax Credit violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the equal protection component of Article 24 of the Maryland Declaration of Rights, as Respondent is treating Petitioner differently, without justification, from similarly situated developers in Baltimore City, specifically those who have received the Tax Credit for a project consisting of rental units spread across multiple buildings.

Petition of Appeal ¶48.

#### LEGAL STANDARD

When confronted with a complaint or petition and a motion to dismiss, a court should "accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party." *Sprenger v. Public Serv. Comm'n of Md.* 400 Md. 1, 21 (Md. 2007) (citations omitted). A court should "order dismissal only if the allegations and

permissible inferences, if true, would not afford relief to the plaintiff.” *RRC Northeast, LLC v. BAA Md., Inc.*, 413 Md. 638, 643 (Md. 2010).

With respect to FHA violations, *Reyes v. Waples Mobile Home Park Ltd. P’ship*, 903 F.3d 415, 424 (4th Cir. 2018) states that a court must begin with a plaintiff’s demonstration of a “robust causal connection between the challenged policy and a disparate impact on a protected class.” *Id.*

With respect to federal and Maryland EPR violations, “a plaintiff must first demonstrate that [it] has been treated differently from others with whom [it] is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination.” *Morrison v. Garraghty*, 239 F.3d 648, 654 (4th Cir. 2001).

#### ARGUMENT

The City couches Haven Rock’s FHA issue as falling under 42 U.S.C. § 3613(a)(1)(A), involving whether an “unintentional housing discrimination” practice results from the City’s requirement for more “traditional” high-rise apartment buildings than multi-family townhome-style rental units with three bedrooms and a yard for pets. Under that analysis, the City states, the Supreme Court held that “[g]overnmental or private policies are not contrary to the disparate-impact requirement unless they are ‘artificial, arbitrary, and unnecessary barriers.’ ” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 543 (2015) and that Haven Rock has not plead facts showing that the City’s denial created a disparate “arbitrary, artificial, and unnecessary barrier” to housing for minorities.

As Haven Rock responded, however, even if § 3613(a)(1)(A) were the only proper analysis to consider an alleged FHA violation, the Supreme Court’s three-step framework, adopted by the Fourth Circuit in *Reyes* begins with the plaintiff demonstrating the connection

between the policy and the disparate impact. *Reyes*, 903 F.3d at 415. For purposes of the current motion, the single alleged fact that “Black and Latino Baltimoreans are more than twice as likely to live in households with children than White Baltimoreans” (hence the need for more multi-bedroom housing for Blacks and Latinos) is enough to meet that first step. If that fact is proven at an evidentiary hearing, a plausible connection is made between the policy and the disparate impact. The burden would then shift under the second step to the City to persuade this Court, at an evidentiary hearing, that there is a valid interest served by the policy of approving credits only for “traditional” (one or two bedroom) projects that have the unintended consequence of furthering disparities for a protected class.

A similar analysis holds for the EPR question. The City argues that Haven Rock has alleged no facts that support an allegation of an EPR violation. The City states,

Assuming the accuracy of Haven’s factual averment that there are “developers in Baltimore City . . . who have received the Tax Credit for a project consisting of rental units spread across multiple buildings,” these developers are not “similarly situated” to Haven.

The City, however, has identified the merits of this issue: other developers may or may not be “similarly situated.” In identifying the question for the merits, the City has effectively admitted that the alleged fact is enough to defeat its own motion. If Haven Rock can demonstrate, as plead, that others who are similarly situated have received the same credit that they have been denied, they have made a *prima facie* case for relief pursuant to EPR. Haven Rock has plead that there are similar developments that have received the credit and so similarly situated developers exist.

## CONCLUSION

For the above reasons, the Motion to Dismiss is DENIED.

DATE: August 11, 2023

CERTIFIED TRUE COPY

TEST: Andrew Berg, Clerk

**NOTICE:** You have the right of appeal from the above Order to the Circuit Court of any County or Baltimore City, wherein the property or subject of the assessment may be situated. The Petition for Judicial Review **MUST** be filed in the proper Court within thirty (30) days from the date of the above Order of the Maryland Tax Court. Please refer to Rule 7-200 et seq. of the Maryland Rules of Court, which can be found in most public libraries.