SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2148-15T3

ADRIAN TOOLEY-LESTER,

Complainant-Appellant,

v.

JOSEPH TAYLOR & SONS, INC.,

Respondent.

Submitted September 14, 2017 – Decided February 6, 2018

Before Judges Rothstadt and Gooden Brown.

On appeal from the Division on Civil Rights, Docket No. HR07WT-65229.

Anthony J. Van Zwaren, attorney for appellant.

Christopher S. Porrino, Attorney General, attorney for respondent New Jersey Division on Civil Rights (Andrea M. Silkowitz, Assistant Attorney General, of counsel; Jodie E. Van Wert, Deputy Attorney General, on the brief).

PER CURIAM

Appellant Adrian Tooley-Lester appeals from the August 21, 2015 final agency decision of the Director of the Division on

Civil Rights (Division) finding no probable cause to credit appellant's allegations that her landlord, respondent Joseph Taylor and Sons, Inc., discriminated against her in violation of the New Jersey Law Against Discrimination (LAD). N.J.S.A. 10:5-1 to -49. After considering the arguments raised in light of the record and applicable legal principles, we affirm.

On April 17, 2015, appellant filed a verified complaint with the Division claiming that her landlord's president, William Taylor, discriminated against her based on her source of lawful income when he refused to accept her rent subsidy, in violation of the LAD. N.J.S.A. 10:5-12(g)(4) makes it unlawful for an owner, managing or other agent, or employee to refuse to rent or lease real property to any person because of their source of lawful income.

By way of background, appellant alleged she had been a tenant at her landlord's apartment building "since 1996." According to appellant, "on February 25, 2015, she was approved for Temporary Rental Assistance [TRA] with the Passaic County Board of Social Services" and "on the same day . . . provided [Taylor] with the Landlord Temporary Rental Assistance Form for his completion." However, when she stopped by Taylor's office the following day and "asked [his] secretary . . . about the status of the form[,] [his

secretary] advised [appellant] that [the landlord] was no longer taking [v]ouchers or [TRA]."

On April 30, 2015, appellant, an African American, amended her complaint to add discrimination based on her race and familial status because she was pregnant at the time. Appellant described her pregnancy as "high risk." N.J.S.A. 10:5-12(g)(1) makes it unlawful for any person to refuse to rent or deny real property to any person because of race, pregnancy, or familial status.

In a June 12, 2015 answer, her landlord denied the allegations of discrimination in their entirety.[1] Her landlord averred that Taylor was the landlord's attorney and had an economic interest in the building. Her landlord denied that Taylor advised appellant that they were no longer accepting rent subsidies and also denied that either "discriminated against [appellant] for racial or any other reason." According to her landlord, "[t]he dispute alleged by [appellant] had nothing whatsoever to do with [appellant's] race" but "was solely related to her failure to pay required rent" after appellant was terminated from the housing assistance program.

Pursuant to N.J.A.C. 13:4-4.1(b), the Division conducted an investigation into whether "probable cause" existed to credit

[1] In a June 18, 2015 amended answer, her landlord corrected the dates of events listed in its counter-statement of facts.

appellant's allegations of discrimination. The Division's investigation included document and information requests, in-person and telephonic interviews, and an on-site inspection. Specifically, the Division investigated appellant's claims of discrimination because she was a Section 8 tenant and, unlike other tenants, underwent repeated eviction proceedings due to the temporary termination of her rent subsidies; that Taylor's delay in completing necessary paperwork for the resumption of her benefits, attempts to undermine her eligibility for benefits, and pursuit of eviction proceedings despite knowing her benefits would be reinstated were motivated by animus; that Taylor was aware of her high-risk pregnancy as well as her impending receipt of temporary disability benefits; and that Taylor made racially derogatory remarks in her presence.

The Division's investigation revealed that her landlord owned and operated the twenty-seven unit apartment building in Clifton where appellant had resided since 1997. Appellant's lease had been renewed every year until 2014. When appellant's lease commenced in 1997, she had a Section 8 rent subsidy authorized by the United States Department of Housing and Urban Development (HUD) and administered by the Clifton Public Housing Agency (Agency). On March 19, 2014, the Agency sent a letter to appellant stating that she was no longer eligible for the Section 8 housing

program because her income was too high. The letter also stated that because she did not report income received from 2011 to 2013, appellant owed the Agency $31,885.20. Taylor received a copy of the letter as notification that the Agency would no longer be paying a portion of appellant's monthly rent of $725, which was due on the first of each month under the terms of the lease.

Appellant lost her job as a schoolteacher on June 30, 2014, and her unemployment benefits ended the second week of January 2015. When appellant did not pay rent for January and February 2015, her landlord commenced eviction proceedings against her. In a February 24, 2015 consent order, appellant and her landlord entered into an agreement wherein appellant agreed to pay $1504 for unpaid rent and make timely rent payments going forward, in exchange for her landlord dismissing the eviction complaint.

Contrary to appellant's assertion that she provided the TRA form to Taylor's secretary the following day but was advised that her landlord was no longer accepting rental assistance vouchers, Taylor's secretary denied making any such statement. Instead, she told Division investigators that she gave appellant's paperwork to Taylor. In turn, Taylor told Division investigators that before completing the paperwork, he contacted Social Services to confirm that appellant was approved for TRA. Upon receiving confirmation, he completed his portion of the paperwork, indicated he would

allow appellant to resume her tenancy if the back rent was paid in full, and faxed the paperwork to appellant's Social Services caseworker on March 11, 2015. Taylor produced copies of the fax transmittal receipt as well as a March 18, 2015 invoice showing payment of $2229 by Social Services for appellant's back rent for January, February, and March 2015.[2]

Social Services also paid appellant's rent for April, May, and June 2015. However, on June 8, 2015, Social Services notified appellant that her rent subsidy was terminated effective June 30, 2015. The reason cited for the termination was that "[appellant's] behavior directly caused the [] emergency" because "[appellant] lost [her] Housing Authority Subsidy on April 1, 2014." Her landlord was notified accordingly. Appellant failed to make a rent payment in July 2015 but continued to reside in the apartment.[3]

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[2] On March 15, 2015, a landlord-tenant judge denied appellant's motion to vacate the February 24, 2015 consent order and granted her landlord a warrant of removal, requiring appellant to vacate the premises by March 23, 2015. Despite the judge's order, appellant remained in her apartment.

[3] On July 27, 2015, her landlord filed another eviction complaint against appellant, and a trial was scheduled for August 20, 2015. However, appellant requested a fair hearing on the termination of her TRA benefits, and the matter was transmitted to the Office of Administrative Law (OAL) as a contested case. The OAL scheduled a hearing for August 17, 2015. In the interim, appellant's TRA benefits were continued pending a final decision, and Social

During his interview with Division investigators, Taylor also indicated that there were other Section 8 tenants in the apartment building and a diverse racial mix. Taylor denied ever making racially derogatory comments to appellant and "didn't even remember that she was pregnant." The investigation confirmed that there were five other Section 8 tenants in the apartment building, twenty Hispanic tenants, two other African American tenants, two Caucasian tenants, and other tenants with children. Additionally, the Division investigator reviewed petitions dating back to early 2014, purportedly signed by several tenants and addressed to Taylor. One of the petitions complained "for the second time" that appellant "constantly harass[ed] [them], especially the Hispanic people," and their children, including a two-year-old child with "special needs." The petition described appellant as "aggressive, racist and a dangerous person."

On August 21, 2015, after sharing the information obtained during the course of the investigation with appellant and affording

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Services issued payments for appellant's July and August rent, which her landlord accepted. Following the OAL hearing, the Administrative Law Judge (ALJ) concluded that appellant's emergent situation resulted from her loss of employment as well as her high-risk pregnancy and occurred through no fault of her own. The ALJ reinstated appellant's TRA benefits, and, on October 13, 2015, the agency head adopted the ALJ's determination. With the exception of the final agency decision, all these events predated the Division's issuance of its investigation findings. However, the investigation report did not reference or mention any of them.

her the opportunity to submit additional information, the Division determined, "pursuant to N.J.S.A. 10:5-14 and N.J.A.C. 13:4-10.2, that there [was] no probable cause to credit the allegations of the complaint." The Division supported its determination with the following written findings:

> The LAD makes it illegal to refuse to lease an apartment to someone on the basis of their race, familial status, or source of lawful income used for rental or mortgage payments. N.J.S.A. 10:5-12(g). At the conclusion of an investigation, the [Division] Director is required to determine whether "probable cause exists to credit a complainant's allegations of the verified complaint." N.J.A.C. 13:4-10.2. For purposes of that determination, "probable cause" is defined as a "reasonable ground for suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe" that the LAD was violated. Ibid. If the Director determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if the Director finds there is no probable cause, then the finding is deemed a final agency order subject to review by the Appellate Division of the New Jersey Superior Court. N.J.A.C. 13:4-10.2(e).
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> In this case, the weight of the evidence did not support [appellant's] allegations that [her landlord] refused to accept her rental subsidy because of her source of lawful income, race, and/or her familial status. The investigation found that [her landlord] accepted [appellant's] TRA in March 2015 (i.e., a month before she filed her complaint with the [Division]) and accepted her Section 8 rent subsidies for seven years (i.e., from the commencement of her lease in 1997 until

> she was terminated from the program in 2014 for purportedly failing to accurately report her income). Based on the investigation, and in the absence of any evidence whatsoever -- direct, circumstantial, or statistical -- to support [appellant's] allegation that she is being discriminated against based on her source of lawful income, race, or familial status, this case will be closed . . . .

This appeal followed.

We exercise "a limited role" in the review of administrative agency decisions. In re Stallworth, 208 N.J. 182, 194 (2011) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579-80 (1980)). "We accord 'a "strong presumption of reasonableness" to an administrative agency's exercise of its statutorily delegated responsibilities,'" and we are required to give due regard to the agency's expertise. Wojtkowiak v. N.J. Motor Vehicle Comm'n, 439 N.J. Super. 1, 13 (App. Div. 2015) (quoting Lavezzi v. State, 219 N.J. 163, 171 (2014)). "In order to reverse an agency's judgment, an appellate court must find the agency's decision to be 'arbitrary, capricious, or unreasonable, []or not supported by substantial credible evidence in the record as a whole.'" Stallworth, 208 N.J. at 194 (alteration in original) (quoting Henry, 81 N.J. at 579-80).

Thus, in reviewing the agency's decision, we are limited to determining:

> (1) [W]hether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
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> [Mazza v. Bd. of Trs., Police & Firemen's Ret. Sys., 143 N.J. 22, 25 (1995) (citing Campbell v. Dep't of Civil Serv., 39 N.J. 556, 562 (1963)).]

Moreover, we do not substitute our own judgment for the agency's, even if we might have reached a different result. Stallworth, 208 N.J. at 194. It is not our role "to balance the persuasiveness of the evidence on one side as against the other." In re Grossman, 127 N.J. Super. 13, 26 (App. Div. 1974). Rather, it is the agency that must accept or reject the testimony of the witnesses, ibid., and "[a]lthough the factual background is important to our determination[,] . . . we are not being called upon to decide the merits of appellant's" claim. Sprague v. Glassboro State Coll., 161 N.J. Super. 218, 224 (App. Div. 1978).

Pursuant to N.J.S.A. 10:5-14, the Director investigates claims of discrimination made under the LAD and determines whether probable cause exists that a violation occurred. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a

preliminary determination as to whether a complaint should proceed. Sprague, 161 N.J. Super. at 226; see also Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990). In making this preliminary determination, the Division must consider whether, applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination. Thus, "[t]he underlying issue[] for us to decide [is] whether the determination of the Director that no probable cause exists 'for crediting the allegations of the complaint' constitutes an abuse of discretion." Sprague, 161 N.J. Super. at 224.

Appellant argues the Division conducted a "perfunctory investigation" and denied her due process. According to appellant, the Division overlooked crucial facts, such as the fact that the ALJ overturned the termination of her TRA benefits prior to the Division issuing its investigative findings. She also points out that although her rent was ultimately paid for July and August 2015, her landlord still initiated another eviction proceeding in July 2015. Appellant contends the landlord's delay in completing the necessary paperwork for her TRA benefits, attempt to have her lose her eligibility, and numerous attempts to evict her without just cause provide ample evidence to support a probable cause determination. We disagree.

The Division is authorized to conduct investigations following the filing of a verified complaint alleging discrimination under the LAD. N.J.S.A. 10:5-14; N.J.S.A. 10:5-8(d), (h). The Division may "conduct such discovery procedures . . . as shall be deemed necessary . . . in any investigation." N.J.S.A. 10:5-8(i). "This 'discretionary authority to investigate' is reviewable for an abuse of discretion." Wojtkowiak, 439 N.J. Super. at 21 (quoting Gallo v. Salesian Soc'y, Inc., 290 N.J. Super. 616, 650 (App. Div. 1996)).

We are satisfied that neither the statute nor this record warrants our interference with the agency's investigation and determination of no probable cause. Although the Division's investigation report omitted certain facts, including the reinstatement of appellant's TRA benefits following her administrative appeal and her landlord's receipt of rent payments for July and August 2015, those facts were not crucial to the ultimate determination of no probable cause.

Indeed, the gravamen of appellant's discrimination claims are belied by the fact that her landlord accepted rent subsidy payments from appellant from 1997 until she lost her benefits in 2014. Further, other than appellant's self-serving statements, there was no evidence that her landlord or Taylor discriminated against her on the basis of race, pregnancy, or familial status or that any

of their actions were motivated by animus. Accordingly, the Division's determination that no probable cause exists "to credit the allegations of the complaint" does not constitute an abuse of discretion. Nor was the Division's decision arbitrary, capricious, or unreasonable. On the contrary, the finding of no "probable cause" was amply supported by substantial credible evidence in the record as a whole.

Affirmed.