

Fair Housing Litigation Update



2017 PHFA HOUSING FORUM



PHFA

PA HOUSING FINANCE AGENCY

Protected Classes



- Race
- Color
- Religion
- National Origin
- Sex
- Disability
- Familial Status
- Age*
- Ancestry*

*PA Specific

Disparate Impact



- A policy or practice that is neutral on its face but may have significant negative effect on protected groups
 - *Example: Criminal background checks, while neutral on their face could have a disparate impact on African Americans because of systemic disparities in the criminal justice system*
- HUD Rule
 - 24 C.F.R. § 100.500 (2013)
 - ✦ A practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns
 - ✦ Rule sets up a three prong burden shifting test for disparate impact claims

Texas v. Inclusive Communities Projects



- Supreme Court recognized Disparate Impact theory under the FHA
 - (1) Plaintiff bears the initial burden of persuasion
 - ✦ Statistics are not enough
 - (2) Defendant must then show a valid interest served by the policy or practice (and that policy or practice is necessary to achieve that valid interest)
 - (3) Plaintiff must show that defendant's justification for the alleged disparate impact is a pretext

Inclusive Communities Projects v. U.S. Department of Treasury



- ICP claimed that defendant's administration of the Low Income Housing Tax Credit (LIHTC) program is a cause of existing racial segregation of LIHTC units in the City of Dallas
- **Dismissed the Disparate Impact Claim**
 - Courts must “examine with care whether plaintiff has made a prima facie case” and emphasized that disparate impact claims carry a “robust causality requirement”
 - ✦ **Plaintiffs were missing the causal “nexus”**
 - Without this safeguard: disparate impact liability might cause race to be used and considered in a pervasive way and would almost certainly lead governmental and private entities to use numerical quotas

Winfield v. NYC, SDNY



- Plaintiffs challenged city's preference regarding affordable housing distribution, claiming that the policy violates the FHA by causing a disparate impact among racial minorities
- Defendants moved to dismiss the disparate impact claim, arguing that the plaintiffs failed to show statistics demonstrating the preference policy contributes to racial segregation or has a disparate on minorities
 - No causal link
 - Remember from ICP, statistics are not enough?
- Court denied the motion because plaintiffs plausibly pled disparate impact and are not required to prove causation at this stage
 - Differentiate from ICP
 - ✦ The percentage of African Americans in the “outsider” pool is twice the percentage of African Americans in the “insider” pool
 - ✦ Plausibility standard for pleading stage

Westchester Settlement



- 7 years in...
- “total obstructionism”



Bank of America v. Miami



- Miami sued Wells Fargo and Bank of America claiming the banks targeted minorities for extremely risky mortgages that came with high interest rates and exorbitant fees
 - Claim the banks knew many of the borrowers had bad credit and little cash
 - When borrowers sought to refinance or modify loans the bank refused, inducing foreclosure
 - City provided data indicating that banks were significantly more likely to offer these predatory loans to minorities
- Banks said the city lacked standing

Bank of America v. Miami



- SCOTUS rejected the banks' argument
 - The alleged discrimination caused widespread foreclosure and vacancies in the city's minority communities, decreasing the value of both the foreclosed home and the affected neighborhoods
 - This decline in property values decreased property tax revenues
 - Foreclosures forced the city to spend more on municipal services to remedy blight and unsafe conditions
- Court did note that a plaintiff suing under the FHA must show a direct connection between the injury and the violation in order to recover damages

Smith v. Avanti



- Rachel and Tonya Smith were denied housing by a landlord who gave as a reason their “unique relationship”
- After visiting the apartment the couple received an email from the landlord saying that her and her husband kept a “low profile” and wanted to keep it that way
- Does “sex” include sexual orientation and gender identity



HUD Updates



- Bank of America - charged with violating FHA by discriminating against prospective Hispanic mortgage borrowers in Charleston, South Carolina
- Whitehall Township - HUD entered into conciliation agreement with the township after it was alleged it engaged in discriminatory zoning practices
- McGowen and Company/Mack & Waltz - HUD entered into agreements with the insurance companies after it was alleged they denied insurance coverage to properties that contain “subsidized housing” and “low-income housing”
- Alpine Bank & Trust - HUD reached an agreement after it was alleged the company violated the FHA by excluding majority African-American and Hispanic neighborhoods from their service area