

# THE COUNSELLOR



NEXT EVENT: HDLI SPRING CLE CONFERENCE: MAY 17-18, 2010 Washington, DC Registration Still Open!

## ***Hearsay & Section 8 Termination Hearings***

By Lisa L. Walker

Over the past year or so, we have seen a number of lawsuits brought by Section 8 participants challenging terminations based solely on hearsay evidence. Where the PHA seeks to rely upon written statements provided by neighbors or landlords, or statements contained in newspaper articles or police reports, and does not also provide live testimony from the person providing the statements, a due process issue may arise. Since the formal rules of evidence do not apply to Section 8 termination hearings, hearsay evidence generally is admissible. 24 C.F.R. § 982.555(e)(5). However, the hearsay evidence may not be the sole basis upon which a termination is based; there must be some independent evidence to corroborate the hearsay evidence. *Costa v. Fall River Hous. Auth.*, 903 N.E.2d 1098 (Mass. Apr. 13, 2009). When there is no independent evidence available, many courts will overturn the

## ***Tenant-on-Tenant Harassment Is Your PHA Liable?***

By Lisa L. Walker

There have been some interesting developments over the past few years in the area of tenant-on-tenant harassment, and a housing agency's liability for such. In *Jones v. South Bend. Hous. Auth.*, No. 3:08-CV-596, 2009 U.S. Dist. LEXIS 49345 (N.D. Ind. Jun. 10, 2009), a Caucasian public housing resident was alleged to have harassed her African-American neighbors, which involved threats of bodily injury, property damage, harassment of children, and use of racial epithets such as the "N" word. When the African-

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termination. *See, e.g., Id.; Loving v. Brainerd Hous. & Redev. Auth.*, 2009 U.S. Dist. LEXIS 8664 (D. Minn. 2009); *Ervin v. Housing Auth. of Birmingham Dist.*, 281 Fed. Appx. 938, 941 (11th Cir. 2008); *Young v. Maryville Hous. Auth.*, No. 3:09-CV-37, 2009 U.S. Dist. LEXIS 56539 (E.D. Tenn. 2009); *Williams v. Hous. Auth. of Raleigh*, 595 F. Supp. 2d 627, 629 (E.D.N.C. 2008); *Litsey v. Housing Auth. Of Bardstown*, 1999 WL 33604017, at \*6 (W.D. Ky. 1999); *Gammons v. Mass. Dep't of Hous. & Cmty. Dev.*, 502 F. Supp. 2d 161, 165-66 (D. Mass. 2007); *Sweeney v. Housing Auth.*, 215 B.R. 97, 105(Bankr.E.D.Pa.1997). This is because the participant must be afforded the right to confront and cross-examine those adverse witnesses who

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American resident asked for a transfer, her PHA denied her request and, instead, notified the resident that she could be evicted as a result of the conflict she was having with her neighbor. The resident sued the PHA, arguing that the PHA's failure to adequately address racial harassment and threatening her with eviction both violated fair housing laws. The resident further argued that the PHA's actions amounted to constructive

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Greetings Friends and Colleagues:

*We are into a new decade, the economy is improving, and things in the industry are looking up for housing agencies!* HDLI continues to welcome new members and grow the organization. One of my platforms during my presidency of this organization has been to broaden HDLI's member base and we have added more corporate members to our ranks. I am pleased to report that HDLI's Board of Directors recently elected four distinguished new board members (introduced on page 5), including its first corporate Board member – national housing developer and management company CVR Associates, Inc. We will continue to bring into our group the developers, management companies and other individuals and organizations that share our mission toward sustaining and improving public and affordable housing.

It is our hope that the participation of our corporate partners in HDLI events will not only increase their knowledge base of rules and issues facing our industry, but will add even greater depth to our discussions at our conferences and events. Please let us know if any of your development partners, management companies, or other associates with whom you work would benefit by joining HDLI or participating in our events.

## President's Page

### Greetings from HDLI's President



Mattye Gouldsby Jones, Esq.

HDLI also continues to grow its training services into this new decade. About six years ago, HDLI's Executive Director & General Counsel, Lisa Walker, developed an on-site legal training program for public housing agencies, developers and other industry partners. Keeping a close eye on case law developing across the country, Lisa continues to evolve the training to address the up-to-the-minute fair housing issues facing public housing and redevelopment agencies nationwide. Our focus this year is on regional trainings. Perhaps you and your nearby agencies could benefit from a collective fair housing training at your next regional or state housing meeting. Contact Lisa.

Stay tuned as HDLI offers new and exciting training programs and educational conferences this year. I'm looking forward to seeing you soon in Washington for HDLI's Spring Conference.

Mattye 

## Thank you HDLI Sponsors!

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Lisa L. Walker, Esq.

*Dear HDLI Members,*

*The Counsellor* has been under reconstruction for the past several months. *How ya' like us now?* Listening to the helpful feedback of our busy members, we decided to produce a more streamlined version of *The Counsellor* - one that quickly touches on the need-to-know information that we want to impart. We'll still provide you current information on cases and other legal happenings around the country, just without some of the extra "fluff." It is our hope that you will find this a very useful, but quicker, read.

The lead articles in this issue of *The Counsellor* highlight developments in the areas of Section 8 due process and tenant-on-tenant harassment - - two areas that always engender much discussion at HDLI meetings and conferences. Modeled after the success of its fair housing trainings, HDLI is launching a new grievance process training later this year which will include Section 8 hearings and much more!


## Director's Dialogue

News from the Executive Director & General Counsel

~HDLI's Spring CLE Conference~  
May 17-18, 2010 Up to 12 CLE credits!

It is not too late to register for HDLI's upcoming Spring Legal Conference titled "**KEY LEGAL ISSUES FOR A NEW DECADE: Procurement of Legal Services, Smoking Policies, Section 3, Community Service, HUD Audits, Liability for Pest Control, "Ask HUD," and Other Important Issues for 2010 & BEYOND.**" The conference takes place **May 17-18, 2010 at the Washington, DC Marriott**. You won't want to miss experts from HUD and elsewhere across the country discuss these important topics. I will give my semiannual case law review and a keynote luncheon and a cocktail reception also are included! A registration form is attached.


The Obama Administration has pledged to make civil rights enforcement a greater priority. The Spring Conference **Keynote Luncheon speaker is the Honorable Thomas E. Perez, Assistant U.S. Attorney General for Civil Rights**, who will share this Justice Department's initiatives for civil rights.

*We look forward to seeing you!* 

### WELCOME NEW HDLI MEMBERS!

CHICAGO HOUSING AUTHORITY, IL  
MIAMI-DADE COUNTY ATTORNEY'S OFFICE, FL  
ASBURY PARK HOUSING AUTHORITY, NJ  
PATCHOGUE COMMUNITY DEVELOPMENT AGENCY, NY  
CHESAPEAKE REDEVELOPMENT AND HOUSING AUTHORITY, VA  
STAUNTON REDEVELOPMENT AND HOUSING AUTHORITY, VA  
SAN ANTONIO HOUSING AUTHORITY, TX  
HUNTSVILLE HOUSING AUTHORITY, AL  
HARRIS COUNTY HOUSING AUTHORITY, TX  
PORTAGE METROPOLITAN HOUSING AUTHORITY, OH  
PLEASANTVILLE HOUSING AUTHORITY, NJ

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provide evidence. 24 C.F.R. § 982.555(e)(5). There have been cases, however, where courts have held that hearsay did not invalidate the termination. *See, e.g., Robinson v. D.C. Hous. Auth.*, 660 F. Supp. 2d 6 (D.D.C. 2009); *Cintron v. Hous. Auth.*, 2008 Cal. App. Unpub. LEXIS 3662 (Cal. App. 4th Dist. May 2, 2008); *Gammons v. Mass. Dep't of Hous. & Cmty. Dev.*, 502 F. Supp. 2d 161, 165-66 (D. Mass. 2007). Factors to consider regarding the admissibility of hearsay evidence include whether (1) the out-of-court declarant was not biased and had no interest in the result of the case; (2) the opposing party could have obtained the information contained in the hearsay before the hearing and could have subpoenaed the declarant; (3) the information was not inconsistent on its face; and (4) the information has been recognized by courts as inherently reliable. *Basco v. Machin*, 514 F.3d 1177 (11th Cir. 2008). 

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eviction. The court held that the Fair Housing Act only addresses actions that amount to denials of housing; it does not encompass discriminatory actions that occur *after* the dwelling has been acquired. The court held that the actions did not rise to the level of constructive eviction because they were beyond the scope of the FHA.

You also may recall the case from Akron, Ohio that HDLI reported in 2008. *Ohio Civ. Rights Comm. v. Akron Metro. Hous. Auth.*, Slip Opinion No. 2008-Ohio-3320, Summit App. Nos. 23056 and 23060, 170 Ohio App.3d 283, 2006-Ohio-6967 (2008) involved a tenant who sought to establish a "hostile living environment" cause of action in Ohio. The tenant claimed that the PHA violated her fair housing rights by failing to take adequate steps to end tenant-on-tenant racial harassment in her housing complex. The PHA ultimately won, successfully arguing that Congress and the state legislatures did not intend the Fair Housing Act to serve as a means by which neighbors of different

*Don't Miss Upcoming HDLI Events . . .*

HDLI's Spring Legal CLE Conference


May 17-18, 2010

Washington, DC

*Registration form attached*



races may bring neighborhood feuds into court. *See* 42 U.S.C. §3601; *Halprin v. The Prairie Single Family Homes of Dearborn Park Ass'n* (7th Cir. 2004), 388 F.3d 327, 328-29; *Lawrence v. Courtyards at Deerwood Assoc.* (S.D. Florida 2004), 318 F.Supp.2d 1133, 1142; *U.S. v. Weisz* (S.D.N.Y. 1996), 914 F.Supp. 1050,1054; *Walton v. Claybridge Homeowners Association* (S.D. Ind. 2004), 2004 WL 192106 7; *Southend Neighborhood Imp. Ass'n v. St. Clair County* (7th Cir. 1984), 743 F.2d 1207, 1210. As in *Jones*, the court held that state and federal fair housing laws only apply to post-acquisition discrimination if that discrimination interferes with a tenant's access to housing; it does not apply when the discrimination interferes only with the tenant's enjoyment of her dwelling. Moreover, the court found that the PHA must independently be found to have committed a discriminatory act itself. Note that other courts have recognized "hostile living environment" claims under the fair housing act in the sexual harassment context. At issue in the AMHA case was whether the court should recognize a "hostile living environment" claim in the racial discrimination context, which it declined to do.

The best course of action to employ when a tenant complains of tenant-on-tenant harassment is to fully investigate the allegations and ensure that any steps that the housing authority can take within its authority to end the harassment are taken. 

## ***NEWSWORTHY AND EXCITING!***

### **HDLI Welcomes Four New Board Members**

HDLI is pleased to bring to its Board of Directors the breadth of knowledge and experience of the following new Board members:

- **CVR Associates, Inc., Fradique Rocha, Esq.,** Principal
- **Stephen Holmquist Esq.,** member of the law firm of Reno & Cavanaugh, PLLC
- **Sonya Kaloyanides, Esq.,** General Counsel, New York City Housing Authority
- **Mitzie Smith-Mack, Esq.,** of counsel to the law firm of Ballard Spahr, LLP

Come and meet them at the Spring Conference!

**HDLI Spring Conference**  
**May 17-18, 2010**  
**Washington, DC**  
**Up to 12 attorney CLE credits!**

### **Ricardo Morales named a Deputy Comptroller for City of New York**

HDLI Board Member, **Ricardo Elias Morales**, has been appointed the new Deputy Comptroller for Legal Affairs for the City of New York. Many of you know Ricardo in his previous roles as Chairman and also General Counsel for the New York City Housing Authority. HDLI is pleased that Ricardo remains on the HDLI Board of Directors and will continue to share his vast knowledge and insight. The new NYCHA General Counsel is **Sonya Kaloyanides**, whom HDLI is pleased to announce also will serve on HDLI's Board of Directors.

*Many HDLI members report that the HDLI's free list serve is one of the best member benefits they receive. Contact [tcoble@hdli.org](mailto:tcoble@hdli.org) to enroll.*

### **Robert K. Groeb appointed to Alachua County Court**

HDLI is very proud of our own **Rob Groeb**. A sole practitioner, Rob has represented the **Gainesville Housing Authority (GA)** with distinction and has been an active member of HDLI. We are certain that Rob will make a terrific judge. Congratulations, Rob!



*LET US KNOW ABOUT SPECIAL HAPPENINGS AT YOUR ORGANIZATION.*

*SEND YOUR ANNOUNCEMENT, ALONG WITH ANY PHOTOGRAPH, TO:*

*TCOYLE@HDLI.ORG OR CALL (202) 289-3400*

*A quick synopsis of recent cases of interest . . .*

# HOT OFF THE PRESS

Case	Held
<i>Park Lane Residences, L.P. v Boose</i> , 2010 NY Slip Op 50364U (N.Y. Dist. Ct. 2010)	HUD handbook language re: rent increases is mandatory, not merely suggestive.

Case	Held
<i>El-Bey v. N.Y. City Hous. Auth.</i> , 2010 U.S. Dist. LEXIS 25491 (S.D.N.Y. Mar. 15, 2010)	Upheld PHA policy excluding nephews from relatives with succession rights

Case	Held
<i>Taylor v. Hous. Auth. of New Haven</i> , 2010 U.S. Dist. LEXIS 29906 (D. Conn. Mar. 29, 2010)	Delay in responding to reasonable accommodation request did not amount to denial.

Be sure to consult HDLI's Semi-Annual Case Law Review and *Authority* publication for more detailed summaries of recent cases in the industry.



## *Recent HUD Notices*

### Public & Indian Housing Notices (PIH):

<u>Notice Number</u>	<u>Date</u>	<u>Subject</u>	<u>Expiration Date</u>
PIH 2010- 3 (HA) Supersedes PIH- 2008-44	1/20/10	Guidance – Verification of Social Security Numbers (SSNs), Social Security (SS) and Supplemental Security Income (SSI) Benefits	1/31/11
PIH 2010-9 (HA)	3/10/10	Effective Use of the Enterprise Income Verification (EIV) System’s Deceased Tenants Report to Reduce Subsidy Payment & Administrative Errors	3/31/11
2010-10 (HA)	3/31/10	HQS Inspections for the Housing Choice Voucher Program and Guidance Related to Electrical Outlets Requests for Exception Payment Standards for Persons with Disabilities as a Reasonable Accommodation	3/31/11

### Community Development and Planning Notices (CPD):

<u>Notice Number</u>	<u>Date</u>	<u>Subject</u>	<u>Expiration Date</u>
CPD-10-01	4/15/10	Timely Distribution of State CDBG Funds	4/15/11
CPD-10-02 Supersedes: CPD Notice 09-02	4/16/10	Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program for Fiscal Years (FYs) 2011-2013	4/16/11

### Housing Notices:

<u>Notice Number</u>	<u>Date</u>	<u>Subject</u>	<u>Expiration Date</u>
H10-04	1/26/10	Revised Protocol for Placing a Flag in the Active Partners Performance System (APPS) When a Property Receives a Physical Inspection Score Below 60 but Above 30	1/31/11
H10-08	4/13/10	Implementation of Refinement of Income and Rent Determination Requirements in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System – Amendments; Final Rule	4/30/11

\*Note: This is only a partial list of recent HUD notices. All HUD notices are available online at HUDCLIPS:  
[http://portal.hud.gov/portal/page/portal/HUD/program\\_offices/administration/hudclips/notices](http://portal.hud.gov/portal/page/portal/HUD/program_offices/administration/hudclips/notices)

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