THE FIGHT FOR SOURCE OF INCOME PROTECTION CONTINUES
by Daniel Corbitt, Esq. and Kibrett Facey

On November 8, 2017, the Democrats won majority in the Erie County Legislature. This win sparked excitement around the county and gave hope for the rebirth of some of the policies that had been stalled in various committees. The County Executive made a statement expressing his optimism for the future: “The shift in the Legislature to a Democratic majority means that I will have more partners who will work for the betterment of Erie County as a whole, and that we will be able to discuss and explore items that up until now have been stalled. A new policy on ethics is still waiting to be considered and will now hopefully be moving forward, as will a fair housing policy that my administration has proposed.” For many of us, that seemed to be a glimmer of hope for the advancement of policy that the Buffalo-Niagara region so desperately needed.

For the past few years, Housing Opportunities Made Equal (HOME) has receiving an alarming number of complaints of housing discrimination due to a person’s source of income. Erie County families are being denied housing they can afford because they are recipients of lawful income from sources such as Section 8 Housing Choice Vouchers, Supplemental Security Income, Social Security Disability, and even their chosen lawful profession. While this type of discrimination is currently outlawed in three Western New York communities, it is still a constant reality in the rest of Erie County.

To help put a stop to this discrimination, HOME has been working closely with the Erie County Fair Housing Partnership (ECFHP) to push forth legislation. The ECFHP is a not-for-profit organization that works to promote equal opportunity in housing for Western New York residents. The membership includes representatives from government, banking, real estate, legal services, advocacy groups, and community organizations. Home and the ECFHP has long voiced their concern for the injustices many people in Erie County were facing and collaborated to draft legislation that would combat it.

In March of 2016, Erie County Executive Mark Poloncarz called for passage of a county-wide fair housing law that would help fight housing discrimination and promote equal housing opportunities county-wide. After being co-sponsored and submitted by all five Democratic members of the Erie County Legislature in November of 2016, the bill was sent to the Economic Development Committee, where it languished. To become law, a simple majority of the county legislators must vote to approve it. However, while the law had the full support of the Democratic minority, not a single Republican legislator would support this landmark effort to ensure fair housing throughout Erie County, even though some of those same Republican lawmakers represented towns that had enacted laws prohibiting source of income discrimination.

Any proposed law in the county legislature must be adopted within one year of its introduction or it will effectively “die on the vine.” Despite efforts by HOME and the ECFHP to obtain the one additional vote needed, the law was in serious danger of withering and dying through inaction and indifference. As the deadline approached, members of HOME met with Legislator Barbara Miller-Williams to discuss strategies to avert disaster. Then, on November 16, 2017, the proposed law was resubmitted by Legislators Barbara Miller-Williams, Betty Jean Grant, Peter J. Savage, III, Thomas A. Loughran, and Patrick B. Burke. As a result, the law would not simply fade away, but its future was far from certain. Now, with a Democratic majority in the legislature, comprehensive fair housing protections throughout Erie County are closer than ever to becoming a reality. Stay tuned!
In November 2017, HOME welcomed Erin Carman to our Board of Directors.

ERIN CARMAN is a Licensed Master Social Worker and holds a Juris Doctor Degree from the University at Buffalo’s School of Law. Erin is also a graduate of City Honors High School and is currently an Assistant Professor of Social Work at Daemen College. She has extensive experience working with social justice and community development organizations in Western New York and New York City. In her spare time, Erin is an avid fitness enthusiast and enjoys Latin dancing.

Please describe your journey to your current position at Daemen College.

During my first year of social work school, I strengthened my passion for macro systems issues, with a particular interest in the impact of poverty and racism on communities and organizations. In my second year of graduate school, I entered the macro concentration and studied administration, management, and social policy. Upon graduation, I moved to Brooklyn and worked for six years at Catholic Charities of Brooklyn and Queens. I spent the majority of my years there as Director of the Brooklyn Community Centers program. I eventually decided I wanted to return to my hometown and also expand my macro social work career by attending law school. I spent the next few years in law school and focused my practice experience on social policy research. After law school, I focused my work on organizational development consulting (another form of macro social work) and then transitioned into my role as a faculty member at Daemen College’s social work department.

When did you become interested in fair housing and social justice issues?

During my time at Catholic Charities of Brooklyn and Queens, I spent quite a bit of time working with our program team to incorporate systems advocacy work into routine programming to contribute to addressing housing and justice needs beyond direct service. The majority of program clients came to the agency seeking food pantry and/or financial assistance with eviction prevention. Our clients, staff, and many New York City residents at-large were faced with the city-wide affordable housing crisis. I knew, as did many of my colleagues, that we were capable of doing more than delivering crisis-based financial assistance. However, I had to consider program capacity for more work and the interest of senior management in formalizing the process. As a result of these considerations, I started with in-services to educate staff, engaged staff in discussions about advocacy during staff meetings, and began to collaborate with colleagues. I eventually worked internally with one of my colleagues to institute agency involvement in the city-wide Real Rent Reform campaign to repeal vacancy decontrol and contribute to the attempt to preserve a large portion of affordable housing in the city. We worked with local community organizers to educate my team of social workers and supervisors on affordable housing policy, the role of advocacy, and the link with direct service. Our social workers began attending rallies and engaging clients in letter writing campaigns and events. Slowly, we began to link social policy, advocacy, and direct service within a traditional service organization setting.

As a Policy Fellow at Partnership for the Public Good, what projects have you worked on and what advocacy are you particularly proud of?

I began researching as a legal intern, continued to volunteer after law school, and shifted into the ongoing Policy Fellow role. The most extensive project I worked on was researching and writing the brief Alarming Disparities. It has been used by PPG and PPG’s non-profit partners to voice concerns about the need for local criminal justice reform.

How has your educational and professional background in social work and law informed your interest in being a member of HOME’s board of directors?

For me, HOME’s work is a great combination of social work (micro and macro), and law. My interest in HOME stemmed from my work as a macro social worker and my interest in contributing to social change through the combined efforts of working with individuals, while fighting for long-term change in organizations, communities, and social policy. HOME does just this.

What do you hope to accomplish as a member of HOME’s board of directors?

I hope to contribute to the growing awareness in WNY communities of the amazing work that HOME does. I also hope to contribute to the vision and ongoing growth of HOME’s social justice and civil rights work as Buffalo communities grapple with the city’s recent development and fight to protect against the potential affects of gentrification on fair and affordable housing issues.

LITIGATION UPDATE

HOME’s recent enforcement efforts emphasize the barriers that families with children often face while trying to find a place to live. Federal, state, and local fair housing laws explicitly prohibit housing providers from refusing to rent or negotiating to rent, or otherwise making unavailable or denying a dwelling to people because of their familial status. Unfortunately, this type of discrimination remains pervasive. In late 2016, HOME filed two verified complaints with the New York State Division of Human Rights, charging area housing providers with unlawful discrimination against prospective tenants on the basis of their familial status. Prior to filing, HOME had commenced an investigation in these matters after discovering rental listings that expressed a limitation or preference that discouraged prospective renters with children. The listings stated, in part: “Affordable student housing,” and “Perfect for retirees, young professionals or graduate students!”

Under fair housing laws, it is unlawful to make, print, or publish any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates a preference, limitation or discrimination with regard to a person’s familial status. Additionally, fair housing laws prohibit policies that may appear neutral on their face but in practice adversely affect one group of people within a protected class more than another. It should be noted that while it is not facially discriminatory to limit housing to students or non-students – fair housing laws do not identify students as a protective class – housing that is limited only to college students may have a disproportionately negative impact on families with children, since families with children are significantly less likely to contain college students. Therefore, HOME conducted testing to determine whether the housing providers would rent to a family with children in which one of the parents was a non-traditional college student. In both investigations, testers presenting as college students without children were strongly encouraged by the housing providers to rent an apartment, while the testers presenting as a college student with children were treated differently and discouraged from renting the advertised units.

Rental agents treated the testers with children differently by steering them to other housing (that was not actually available), providing later move-in dates, not offering move-in incentives, such as reduced rent rate, that were offered to the testers without children, and making negative statements about the neighborhood and the apartment. In one instance, the tester with children was dismayed to hear that the apartment building was located on a very busy and dangerous street, had recently been burglarized, and had a rodent infestation — none of which was mentioned to the tester without children. After reviewing HOME’s evidence, the Division of Human Rights found probable cause in both matters to believe that unlawful discrimination occurred, and the cases will now proceed to a formal hearing. Stay tuned!
It takes money to make money in our country. To put it another way, to build stronger communities, people must be able to invest in themselves and their neighborhoods. However, research shows that communities of color in Western New York and throughout the nation continue to face barriers to accessing credit services. The Pew Research Center has found that black and Hispanic households are much more likely than white and Asian households to be denied mortgages. According to research from 2015, 27.4% of black applicants and 19.2% of Hispanic applicants were denied mortgages, compared with about 11% of white and Asian applicants. This disparity in lending is largely a result of discriminatory private practices and public policies that have ravaged communities of color for generations.

Some may believe that discriminatory lending practices, such as “redlining,” are remnants of a bygone era. Originally coined in the 1960s to refer to the red lines lenders and insurance providers drew on maps around neighborhoods of color that they would not service, the term has expanded to denote discriminatory lending practices that deny or withhold credit services to potential loan applicants because of the racial or ethnic demographics of their neighborhoods. The practice has been illegal for decades, and while the Fair Housing Act of 1968 does not specifically mention redlining, it does prohibit discrimination at any stage of the lending or home insurance process. Moreover, the Equal Credit Opportunity Act of 1974, the Home Mortgage Discrimination Act of 1975, and the Community Reinvestment Act of 1977 have all created additional protections against redlining and other forms of lending discrimination.

Prior to the passage of those laws, redlining was a routine practice by public and private institutions. In 1937, the Federal Housing Administration (FHA) developed a mortgage insurance program that would have an incalculable impact on our nation’s residential development to the present day. For the first time in our nation’s history, homeownership was within reach for millions of Americans through small down payments and low monthly installments. The Veterans Administration (VA) established a similar mortgage insurance program after the Second World War. Together, these programs formed the foundation for the white middle class as banks eagerly issued federally-secured mortgages to families to buy houses in the nation’s burgeoning suburbs. However, this path to prosperity was almost exclusively available to whites only. The FHA and VA, building on maps developed by the New Deal era Home Owners’ Loan Corporation, color-coded neighborhoods according to their creditworthiness, with minority communities or those perceived to be in danger of becoming integrated colored red and designated “hazardous,” thus choking them off from access to credit. By some estimates, 98% of FHA mortgages went to white homebuyers in the 15 years following the World War II. In fact, the 1939 FHA Underwriting Manual went so far as to state that “if a neighborhood is to retain stability, it is necessary that properties shall continue to be occupied by the same social and racial classes,” and advocated for the enforcement of neighborhood segregation through the use of racially-restrictive covenants, which legally prohibited white homeowners from selling or renting to people of color. With the sanction and support of the government, private banking and savings institutions followed suit and also refused to offer loans in communities of color and integrated communities. As a result, minorities were unable to participate in the unprecedented creation of wealth that resulted from the homeownership boom of the post-war years.

The abandonment of cities through the exodus of white Americans to the suburbs resulted in urban centers becoming predominately communities of color. However, since residents of these communities were shut out from the conventional lending industry, they were unable to invest in their homes and businesses. Of course, the inability to obtain financing created a self-fulfilling prophecy whereby neighborhoods of color experienced disinvestment and blight, resulting in falling property values and validation for lenders’ unwillingness to provide loans in the first place. Vast sums of public money were then spent in urban renewal and highway building programs that destroyed thriving, racially diverse neighborhoods, displacing many residents into strictly segregated public housing.

Further compounding the problem, communities of color have been subjected to “reverse redlining,” or predatory lending in which borrowers of color are forced into high-interest loans. Indeed, the lack of access to basic financial services has resulted in what many consider a “poverty tax,” as low-income households of color have been forced to pay egregious fees to conduct basic financial transactions through check cashers, payday lenders, and other predatory financial service providers.

While illegal for decades, recent cases demonstrate that redlining is not only alive and well but a growing problem. Over the past few years, federal and state regulators have filed dozens of lawsuits charging major banks throughout the country with redlining. Many of those banks do business or are headquartered in Western New York.

To combat the persistent and growing problem of lending discrimination, HOME recently joined the Buffalo Niagara Community Reinvestment Coalition (BNCRC), a group of organizations that fights for economic and social justice by advocating for banking reform, community reinvestment, and access to fair and affordable housing that provides all residents in the Buffalo-Niagara region with the opportunity, capacity, and resources to live in stable communities and build wealth. HOME, together with the BNCRC, is working to ensure all people have an equal opportunity to access the necessary tools to build stronger, more equitable communities.
Housing Choice Vouchers (HCV) are the country’s largest form of low-income rental assistance. The HCV program—formerly known as the Section 8 voucher program—provides a housing subsidy to more than two million households nationwide, enabling them to secure affordable, quality housing in the private market. Families who qualify for vouchers will receive rental assistance that allows them to keep housing and utility costs at around 30% of their income. A HCV covers the remainder, so long as the rent does not exceed an amount based primarily on what HUD determines is the “fair market rent,” or FMR, for a comparable dwelling in the area. A primary objective of the HCV program is to permit families with low-income to settle throughout metropolitan areas, thereby avoiding the high concentrations of poverty and racial segregation that have been linked to significant adverse health, educational, and economic outcomes for children and adults.

The Housing Choice Voucher program is the federal government’s primary program for assisting very-low income families, the elderly, and people with disabilities in affording decent, safe, and sanitary housing in the private rental market. As the HCV program’s name indicates, providing housing choice is its touchstone goal. Section 8 consists of the HCV program, a variety of project-based rental assistance programs, and housing subsidy programs. It has two statutory purposes: (1) “aiding low-income families in obtaining a decent place to live” and (2) “promoting economically mixed housing.” 42 U.S.C. § 1437f(a).

Usually, HUD has set FMRs by averaging the rent cost over entire metro areas or counties. However, as rents can vary greatly from one neighborhood to the next, this method of establishing FMRs sets a rate that is often too low to cover rent in some neighborhoods and much higher than necessary in others. To combat economic and racial segregation of people using housing vouchers, HUD has tested Small Area Fair Market Rents (SAFMR) as an alternative approach. The SAFMR rule, which HUD adopted in 2016 after years of community input and careful study and analysis, is a major step toward correcting this problem. This new approach bases the amount of vouchers on the average rent of each zip code within a metropolitan area. This revised methodology recognizes the existence of very different local rental markets within each metropolitan area and calibrates vouchers more finely to the amount needed to live in various neighborhoods. It thus enables voucher holders to access a wider range of housing, outside of voucher-concentrated, racially-segregated areas of higher poverty and limited opportunity.

Children whose families use vouchers to move to low-poverty neighborhoods when they are young are much more likely to attend college and earn significantly more as adults. Living in a low-poverty neighborhood also substantially improves adults’ mental and physical health. The concentration of predominantly minority voucher users in low-income neighborhoods has had a lifelong negative consequence for voucher users. A number of studies have found a link between neighborhood poverty and children’s behavioral and emotional health, cognitive development, and educational achievements. Neighborhood location can also affect an adult’s access to jobs, transportation, food, and other basic goods and services.

FMRs have greatly restricted housing choice for the disproportionately non-white population of voucher users. The SAFMR rule provides that, as of January 1, 2018, tens of thousands of low-income families who participate in the HCV program—families who are disproportionately African-American, Latino, and other racial minorities—can use their vouchers to move from poor and racially segregated communities to area that provide greater opportunity in education, jobs and more. HUD announced that it would suspend the requirement for two years (until January 1, 2020). After exhaustive study, HUD published the final rule on November 16, 2016 and did not require implementation until January 1, 2018. Unfortunately on August 11, 2017, HUD abruptly announced that is suspending implementation of the SAFMR rule. Additional delay of this much-needed initiative will only further deprive families of their long overdue ability to access safe, affordable, and decent housing. HOME, through its partnership with the National Fair Housing Alliance, will continue to push for implementation of the SAFMR rule.
DSS SECURITY AGREEMENTS DENIED ACROSS ERIE COUNTY
by Kibrett Facey

Many vulnerable Erie County residents are being turned away from the housing of their choice due to the denial of government assistance. Unbound by the law, local landlords are denying apartment seekers tenancies due to their possession of Department of Social Services (DSS) Security Agreements. A Security Agreement is provided in lieu of cash and is a written agreement between the DSS and the landlord that holds the Department of Social Services accountable for any act of non-payment of rent or damage caused by the client. Clients are only able to receive this assistance if they meet specific criteria mandated by the DSS.

With that being said, DSS Agreements are a source of income. In certain municipalities, such as Buffalo, Hamburg, and West Seneca, it is illegal to deny someone tenancy because of their lawful source of income, but this is not being enforced. The remaining Erie County municipalities currently have no protective measures for these tenants with Security Agreements. This means that DSS is essentially providing assistance that is not widely accepted, and little to no action is being taken to ensure that those unable to pay upfront with cash are not being denied housing.

To advance our organization’s mission, HOME does a number of tenant trainings at local shelters in order to prepare transitional clients on housing law as well as their rights and responsibilities once they do become a tenant. Many times clients are not able to leave the shelter as quickly as desired because the Security Agreement that they were given is being constantly turned down by landlords. HOME sat down with Laura Hoehn, the Economic Empowerment Specialist of Haven House, to discuss the Security Agreement issues that her clients face.

According to Hoehn, almost half of her clients are unable to find landlords who will accept the agreements. For her clients who are able to find landlords willing to accept the agreement, they often find that the home will not pass inspection.

“Since most of our clients rely on rapid-rehousing programs to subsidize the DSS budget, the homes need to pass inspection. The other issue is when the home fails, the landlord is not incentivized to fix it because someone else will come around who doesn’t need rapid-rehousing or DSS to pay for the apartment,” she said.

Hoehn also believes that some clients would get out of shelter much quicker if the agreements had to be accepted.

“If the agreements were universally accepted, they may have better access to homes that will pass inspection thus moving them out fast,” she commented.

The lack of enforcement by municipalities regarding the acceptance of Security Agreements is alarming. If it is understood that the denial of one’s source of income can be used as a proxy for denial on the basis of a protected class such as race, sex, or disability, it can be argued that the denial of DSS Security Agreements is also discrimination.

To combat this issue, HOME works to educate landlords on their local laws and the DSS Security Agreement. HOME is also working to improve enforcement overall and change policy so that opportunities in Erie County will no longer be limited.
OUR MISSION

Housing Opportunities Made Equal is a civil rights organization whose mission is to promote the value of diversity and to ensure all people an equal opportunity to live in the housing and communities of their choice – through education, advocacy, the enforcement of fair housing laws and the creation of housing opportunities.

HOUSING OPPORTUNITIES MADE EQUAL, INC. WOULD LIKE TO GIVE SPECIAL THANKS TO...

First Niagara Foundation • M&T Bank • Town of Hamburg
• Belmont Management Company, Inc. • People, Inc. • Delta Development • Evans Bank • Glendale Realty Service Group • Oxford Consulting • Rich Products Corporation • Belmont Housing Resources of WNY • Buffalo Teachers Federation • Clover Management • Gibson, McAskill & Crosby • Jewish Federation Apartments • Realty Edge Inc. • Buffalo Niagara Association of REALTORS, Inc. • Lipsitz & Ponterio, LLC • Norstar Development USA, L.P. • Rental Assistance Corporation • Wegmans • Cazenovia Recovery Systems • Community Services for the Developmentally Disabled • Feroleto Law