



Judge advances fair housing case citing racial implications of criminal record screening

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HARTFORD—On August 7, 2020, the U.S. District Court for the District of Connecticut allowed a fair housing lawsuit against CoreLogic Rental Property Solutions (“RPS”) to proceed to trial. The plaintiffs, Connecticut Fair Housing Center (“the Center”) and Carmen Arroyo, allege that RPS’s tenant screening product, CrimSAFE, discriminates against people of color because it prevents landlords from reviewing background records on a case by case basis to determine if a criminal record should disqualify a rental applicant. Because systemic racism in the criminal justice system disproportionately burdens Black and Latino individuals as compared to whites screening of this type results in higher degrees of housing denial for people of color. In permitting the case to go to trial, Judge Bryant found that:

. . . disparities adverse to African Americans and Latinos and in favor of whites exist at all stages of the criminal justice process: in arrest rates, in jail detention rates, and in prison incarceration rates. African Americans in the United States are more than four times as likely as whites, and Latinos two-and-a-half times as likely as whites, to have been either jailed or incarcerated at some point in their lifetimes. (citations omitted)

To minimize the disparate impact of using criminal records to screen tenants, HUD Guidance has made clear the importance of individualized review to evaluate whether there is evidence of risk to the safety of the rental community by considering not only the criminal history, but the applicant’s age at the time of the offense, evidence of good tenant history since

then, and any efforts at rehabilitation. However, RPS's CrimSAFE product permits, and indeed encourages, landlords to block leasing agents from reviewing any details about the applicant's criminal history, providing only the conclusion "disqualifying records found." This precludes the sort of individualized review that is needed to minimize the adverse impact of the screening.

"We are pleased by the Court's thorough ruling, permitting Plaintiffs' claims of discrimination based on race and ethnicity to proceed to trial," said Christine E. Webber, a Partner at Cohen Milstein. "We are particularly pleased that the Court determined that RPS was an integral participant in the denial of housing, and thus could not avoid answering these claims of discrimination by pointing to the role played by landlords in making rental decisions. Moreover, the Court found there was sufficient evidence for a finder of fact to conclude that RPS's CrimSAFE product had a disparate impact on African American and Latino tenants."

The Court also held that "no reasonable fact finder could find that there is a business justification for screening solely on the basis that someone has a pending arrest, in the absence of the details of the arrest." In this case, Ms. Arroyo's son had been arrested in Pennsylvania in 2014 on a misdemeanor charge that the Commonwealth's court system classified as less serious than a traffic violation. Since the arrest, Ms. Arroyo's son became a quadriplegic and the charge was dismissed without a finding. Nevertheless, Ms. Arroyo's landlord accepted RPS's recommendation that he be denied the right to move from the nursing home where he was living to his mother's apartment.

Greg Kirschner, the Center's Legal Director, who is litigating the case along with Center staff attorneys Sarah White and Salmun Kazerounian, stated, "Judge Bryant recognized that an arrest record that did not result in conviction is not proof of anything. There is no business justification for including such arrests because as the judge states in her opinion, 'RPS provides

neither legal nor empirical support for the proposition that the lone fact that an applicant has a pending arrest record is sufficient for a housing provider to determine that an individual poses a threat to the health and safety of a residential community.’ The decision also recognizes that people of color are denied the housing of their choice, not just as the result of individual acts of discrimination, but also because of algorithms used by corporations that have a disparate impact on people of color.”

In support of their case, Ms. Arroyo and the Center cited several studies that show no compelling empirical evidence to suggest that old criminal records are predictive of future offending. The more time that passes since the last crime, the less likelihood a person will reoffend in the future. Eric Dunn, Director of Litigation at the National Housing Law Project, stated “The ruling makes clear there is no adequate justification for the discriminatory effects of denying housing based solely on arrest records, and that’s true whether you’re a landlord yourself or a company that screens tenants for landlords,” said Eric Dunn, director of litigation for the National Housing Law Project. “Hopefully, the industry is paying attention and we won’t see this racist practice happen ever again.”

The case is scheduled for trial in February 2021.

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The Connecticut Fair Housing Center, a statewide civil rights organization, works to ensure that all people have equal access to housing opportunities in Connecticut free from discrimination. Because housing discrimination disproportionately affects people with low incomes, the Center focuses on the intersection of poverty and housing discrimination. The Center also assists Connecticut residents who have been hit hardest by the recent COVID-19 pandemic.

The National Housing Law Project, based in Washington, DC, is dedicated to advancing housing justice for poor people and communities. NHLP achieves this by strengthening and enforcing the rights of tenants, increasing housing opportunities for underserved communities, and preserving and expanding the nation’s supply of safe and affordable homes.

Cohen Millstein, a private plaintiffs' law firm with offices in Washington, DC, New York, NY, Philadelphia, PA, Chicago, IL, Raleigh, NC, and Palm Beach Gardens, FL, fights corporate abuse, and pursues litigation on behalf of affected individuals, whistleblowers, public entities, and other institutions in cases that have raised challenging, significant, and often novel legal issues. The firm specializes in holding large corporations accountable for their actions even though they often have significantly more resources than those damaged by their misconduct.