

# Housing Rights **ADVOCATE**

Austin Tenants' Council • Issue 76, Spring 2015

## Retaliation – You Don't Have To Take It

In August 2013, Ralph and Shayle Bailey contacted ATC because they believed that they were being discriminated against at Montecito Apartments based on their race – White. The Baileys believed that management was more lenient with non-White tenants than they were with them in regards to payment of rent and assessment of late fees. The Baileys filed a housing discrimination complaint with HUD that was investigated by the City of Austin Equal Employment & Fair Housing Office (EE/FHO). In October 2013, the case was resolved through a conciliation agreement, which stated that Montecito Apartments had to take the following actions: pay the Baileys \$686, cease pursuing the various other alleged outstanding costs and charges, and have the eviction removed from the Baileys' record.

Almost one year after entering into the conciliation agreement, the Baileys returned to ATC because they believed that Montecito Apartments was retaliating against them for filing their previous complaint. Not only had Montecito Apartments not followed through on the terms

of the conciliation agreement, but they had also taken adverse actions against the Baileys such as providing negative rental referral information, referring the Baileys' tenant file to a collection agency, and reporting to the credit reporting agencies that the Baileys owed the property money. In August 2014, the Baileys filed a retaliation complaint with HUD against Montecito Apartments. The COA EE/FHO investigated this complaint and was able to negotiate another conciliation agreement. This time, Montecito Apartments had to complete the actions that they failed to as part of the first conciliation agreement and had to pay the Baileys \$9,500 in damages.

ATC would like to congratulate the Baileys on being focused and steadfast in the pursuit of their housing rights. Despite the awful obstacles that they faced – homelessness – as a result of the discrimination that they encountered, they followed through and proved that the Fair Housing Act does not tolerate retaliation against those who have filed a complaint and/or exercised any other right under the Act.

## Michael McCrory v. Cynthia Brettschneider

The COA EE/FHO settled the case of an Austin landlord charged with violating the Fair Housing Act for terminating the lease of a transgender tenant after he refused to apply for disability benefits at her insistence. The COA EE/FHO alleged that Cynthia

Brettschneider, owner of a single-family house located at 413 West Annie Street, Austin, TX, believed her tenant, Michael McCrory, was disabled due to his non-conformity with gender norms. Brettschneider gave McCrory a lease that included the term: "Michael will immediately pursue

## Tenant-Landlord Rights in the 84th Legislative Session

In the 84th Legislative Regular Session, tenant-landlord rights are the subject of multiple bills in both houses. While many of the proposed changes may seem innocuous to some, subtle restrictions or enhancements to tenants' rights can profoundly affect their daily lives. The following is a brief summary of just a few of the proposed changes to the Texas Property Code as of the drafting of this article:

H.B. No. 1332 by Rep. Mike Schofield  
*This bill allows a Notice to Vacate to be posted to the exterior of the tenant's door effectively announcing that the tenant is being asked to leave.*

S.B. No. 1367 by Sen. Royce West  
*If there is no deposit under the lease, this bill requires a tenant to be given notice of alleged damages and charges on or before the 30th day after the date the tenant surrenders the premises.*

H.B. No. 2403 by Rep. Rodney Anderson  
*After the initial copy of the lease is provided to a tenant and upon written request by a tenant, an additional copy would cost \$10.*

The 84th Legislative Regular Session ends June 1. For bill status, call the Legislative Reference Library's Hotline: 877-824-7038.

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disability payments...[n]ot negotiable." After McCrary refused to sign a lease with this discriminatory term, Brettschneider issued a notice to vacate. She also threatened McCrary with imprisonment and reports to the IRS after he complained about the discriminatory lease terms. Brettschneider did not impose the same terms on McCrary's roommate. Later, Brettschneider rescinded the termination notice and allowed the roommate, but not McCrary, to remain at the property.

In May 2014, the case was settled prior to going to court. ATC is happy to report that McCrary was able to purchase a travel trailer and is no longer homeless.



ATC would like to thank attorney Malcolm Greenstein for continuing to support ATC's efforts by being a member of our Cooperating Attorney Referral Program and working hard to obtain justice for those whose rights have been violated.

## NHCD Announces Additional Funding

In what will certainly be welcome news for many local residents, the City of Austin's Neighborhood Housing and Community Development (NHCD) recently announced additional funding availability for several of their home repair programs. These programs offer a variety of services to eligible residents "so they can have access to livable neighborhoods

## Source of Income as a Protected Class

In December 2014, Austin City Council unanimously passed what is now referred to as the "Source of Income Ordinance." The Council's action amended Austin's existing Fair Housing Ordinance by adding an individual's source of income as a protected class.

The ordinance is hotly contested by the apartment industry. Immediately after the Council's action, the Austin Apartment Association (AAA) filed a lawsuit in Travis County district court asking for an injunction to halt implementation of the ordinance.

In their original petition, AAA asserts that the ordinance "forces property owners to contract with the federal government under the Section 8 Housing Voucher Program." They argue that the ordinance would have the adverse effect of placing "substantial legal and administrative compliance costs" upon rental property owners presumably not prepared to bear them.

The suit states that the ordinance is unenforceable because it is "preempted" by both state and federal law and violates the Texas and U.S. constitutions. The suit also argues that the ordinance violates a rental property owner's "freedom to contract."

and increase their opportunities for self-sufficiency." Among the announced funds, NHCD is offering:

- Up to \$30,000 in home repair and lead removal for homes built before 1978;
- Up to \$15,000 in accommodations and modifications for homeowners and renters over the age of 62, or persons with disabilities;
- 0% interest, deferred, forgivable

Proponents of the ordinance argue that by prohibiting discrimination based upon source of income, the ordinance will have the positive direct effect of broadening housing opportunities for low-income residents. Proponents further argue that the ordinance would increase affordable housing, school choice, and employment opportunities thereby reducing poverty broadly.

Importantly, the ordinance, as approved, does not require a rental property owner to accept a renter's application simply because he or she may be a participant in the Section 8 Housing Voucher Program.

In February, U.S. District Judge Sam Sparks rejected AAA's claims. Issuing his opinion, Judge Sparks specifically addressed AAA's "freedom to contract" claim writing: "Moreover, the Ordinance advances an obviously legitimate government interest: ensuring low-income persons — many of whom are racial minorities, children, disabled or elderly — have access to affordable housing (and thus to better schools and safer neighborhoods) throughout the City of Austin."

In March, the U.S. Fifth Circuit Court denied AAA's appeal for an injunction. As of March 2015, the ordinance is in effect.

loans to address major interior and exterior repairs, structural, HVAC, plumbing, and electrical repair for homeowners.

The announced additional funding increases the reach of the NHCD, allowing it to execute its mission in serving its target populations through various community and economic development programs.

For more information call: 512-974-3100

## Represalias – No las tiene que soportar

**E**n agosto 2013, Ralph y Shayle Bailey se comunicaron con ATC porque sentían que habían sido discriminados en los Apartamentos Montecito debido a su raza (blanca). Los Baileys decían que la administración era más tolerante con los inquilinos no blancos que con ellos en cuanto al pago de renta y cobro por demoras. Los Baileys presentaron una denuncia ante HUD por discriminación en la vivienda, la que fue investigada por la Oficina de Igualdad en Empleo y Vivienda Justa (EE/FHO) de la Ciudad de Austin (COA). En octubre 2013, el caso se resolvió mediante un acuerdo que dispuso que Apartamentos Montecito debía hacer lo siguiente: pagar a los Baileys \$686, desistir en el cobro de otros supues-

tos costos y cargos debidos, y quitar el desalojo de los Baileys de los registros.

Casi un año después de participar en el acuerdo, los Baileys volvieron a ATC diciendo que los Apartamentos Montecito estaban tomando represalias contra ellos por presentar la previa denuncia. Los Apartamentos Montecito no solo no cumplieron los puntos acordados sino que tomaron acciones perjudiciales para los Baileys, como brindar referencias negativas de renta, enviar la ficha de los Baileys a una agencia de cobranzas, y reportar a las agencias de informes crediticios que los Baileys debían dinero por esa propiedad. En agosto 2014, los Baileys presentaron ante HUD una denun-

cia contra los Apartamentos Montecito por represalias. COA EE/FHO investigó la denuncia y logró negociar otro acuerdo conciliatorio. Esta vez, los Apartamentos Montecito debían cumplir las acciones incumplidas del primer acuerdo y debían pagar a los Baileys \$9,500 en daños.

ATC desea felicitar a los Baileys por permanecer firmes y resueltos a hacer respetar sus derechos de vivienda. A pesar de los terribles obstáculos que confrontaron –quedarse sin techo—como resultado de la discriminación que sufrieron, ellos persistieron y probaron que el Acta de Vivienda Justa no tolera las represalias contra aquellos que presentan una denuncia y/o ejercitan todo otro derecho bajo el Acta.

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## Fuente de ingresos como clase protegida

**E**n diciembre 2014, el Concejo Municipal de Austin aprobó unánimemente lo que hoy se denomina “Ordenanza de Fuente de Ingresos”. La acción del Concejo enmendó la existente Ordenanza de Vivienda Justa en Austin, agregando la fuente de ingresos de la persona como clase protegida. La ordenanza es enérgicamente disputada por el sector de apartamentos de renta. Inmediatamente después de la acción del Concejo, la Asociación de Apartamentos de Austin (AAA) inició un juicio en la corte de distrito del Condado Travis, pidiendo una orden restrictiva a la implementación de la ordenanza.

En su petición original, AAA afirma que la ordenanza “fuerza a propietarios a entrar en contrato con el gobierno federal bajo el Programa de Vouchers de Viviendas Sección 8”. Ellos arguyen que la ordenanza tendría el efecto adverso de imponer “sustanciales costos de cumplimiento legales

y administrativos” a propietarios presuntamente no preparados para costearlos.

El juicio dispone que la ordenanza no puede hacerse cumplir porque va contra la ley estatal y federal, y viola las constituciones de Texas y EE.UU. El juicio argumenta también que la ordenanza viola la “libertad de contrato” del propietario rentista.

Los proponentes de la ordenanza arguyen que al prohibir la discriminación en base a la fuente de ingresos del inquilino, la ordenanza tendría un efecto positivo en ampliar las oportunidades de vivienda para residentes de bajos ingresos. También señalan que la ordenanza aumentaría el número de viviendas económicas, opción de escuelas y oportunidades de empleo, reduciendo la pobreza en gran medida.

Es importante señalar que la ordenanza, de ser aprobada, no requiere que el propietario acepte una solicitud

de renta simplemente porque el solicitante participa en el Programa de Vouchers de Vivienda Sección 8.

En febrero, el Juez de Distrito Federal Sam Sparks rechazó los reclamos de AAA. Emitiendo su opinión, el Juez Sparks se refirió específicamente al reclamo de “libertad de contrato” de AAA, diciendo: “Además, la ordenanza promueve un interés del gobierno obviamente legítimo: asegurar que las personas de bajos ingresos –muchas de las cuales son de minorías raciales, niños, discapacitados y ancianos—tengan acceso a viviendas económicas (y de igual manera mejores escuelas y vecindarios más seguros)—en toda la ciudad de Austin”.

En marzo, la Corte del Quinto Circuito Federal negó la apelación de AAA para una orden restrictiva. Hasta marzo de 2015, la ordenanza seguía en efecto.

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*Housing Rights Advocate* is published quarterly by the Austin Tenants' Council, 1640-B East 2nd Street, Suite 150, Austin, TX 78702. The publication is supported by grants from the City of Austin (CDBG) and the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The publisher is solely responsible for the accuracy of the statements and interpretations contained herein. Such interpretations do not necessarily reflect the views of the government.

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**Fair Housing Program / Programa de Vivienda Justa** This program helps any person in the Austin metropolitan area who has been discriminated against in the rental, sale, financing, or appraisal of housing. FHP investigates complaints and coordinates legal services to assist victims of discrimination when their rights under state and federal fair housing laws have been violated. Este programa ayuda a cualquier persona en el area metropolitana de Austin que se ha enfrentado con discriminación en la renta, compra, financiamiento, o evaluación de vivienda. El FHP investiga las quejas y coordina servicios legales para las victimas de discriminación cuando sus derechos están violados bajo las leyes estatales y federales de vivienda justa. Call / llame al 474-7006.

**Telephone Counseling / Consejos por Telefono** Trained counselors answer tenant-landlord questions and make appropriate referrals. However, ATC offers no legal advice. Consejeros contestan preguntas acerca de inquilinos-propietarios y hacen referencias necesarias. Sin embargo, ATC no ofrece consejos legales. Call / llame al 474-1961.

**In-House Counseling / Consejos en la Oficina** Counseling information and materials are provided to clients in need of more in-depth assistance. Se provee información y materiales a los clientes que necesitan mayor información. Call for an appointment / llame para una cita al 474-7006.

**Crisis Intervention / Intervencion Crisis** Counselors mediate on behalf of tenants to resolve emergencies that threaten their housing. Consejeros median en nombre del inquilino a resolver una emergencia que amenaza su vivienda. Call / llame al 474-1961.

**Rental Repair Assistance / Ayuda con Reparaciones en su Vivenda** The Renters' Rights Assistance Program helps low-income renters enforce their rights for repairs through advocacy and mediation. El Programa de Asistencia con los Derechos de Inquilinos ayuda a los inquilinos de bajo ingreso da fuerza a sus derechos para reparaciones por medio de negociación y mediación. Call / llame al 474-7006.

**Lease Forms / Contratos** ATC sells lease packets and brochures describing landlord and tenant rights and responsibilities to landlords for a small fee. ATC vende paquetes de contratos y folletos, por una cuota nominal, describiendo los derechos y las responsabilidades del propietario y del inquilino. Call for more information / llame para mayor información al 474-7006 .

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