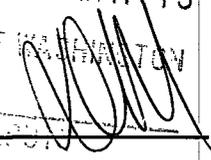


FILED
COURT OF APPEALS
DIVISION II

2017 APR 20 AM 11:13

STATE OF WASHINGTON

BY 

No. 49772-7-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

PENINSULA HOUSING AUTHORITY,

Appellant,

v.

LEE ANN DANIELS, and all other occupants of the premises,

Respondents.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable Christopher Melly
Cause No. 16-2-00371-3

REPLY BRIEF OF RESPONDENT

Steve Robins, WSBA 29431
Attorney for Respondent
NORTHWEST JUSTICE PROJECT
408 East 5th Street
Port Angeles, WA 98362

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

I. INTRODUCTION 1

II. STATEMENT OF FACTS 2

III. ASSIGNMENT OF ERROR5

 A. ASSIGNMENT OF ERROR5

 B. ISSUE PERTAINING TO THE ASSIGNMENT OF ERROR5

IV. STANDARD OF REVIEW5

V. ARGUMENT 5

VI. CONCLUSION 12

VII. APPENDIX14

TABLE OF AUTHORITIES

Council House, Inc. v. Hawk,
136 Wash. App. 153, 156, 147 P.3rd 305 (2006)5

McGary v. Westlake Investors,
99 Wn.2d 280, 287, 661 P.2nd 971 (1983)6

Duvall Highland, LLC v. Elwell,
104 Wash. App. 763, 19 P.3rd 1051 (2001)6

Hertz v. Dieble
86 Wash. App. 102, 105, 931 P.2nd 24 (1997)6, 7

Seattle First Nat'l Bank v. Siebol
64 Wash. App. 401, 409, 824 P.2nd 1252, *Review Denied*
119 Wn.2d 1010, 837 P.2d 386 (1997) 7

Marine Enters, Inc. v. Security Pas. Trading Corp.,
50 Wash App. 768, 772 P.2d 1290, *Review Denied*
111 Wash App. 1013 (1988)7

Wesche v. Martin
64 Wash. App. 1. 13, 822 P.2d 812 (1997) 7

Angelo Prop. Co., LP v. Hafiz
167 Wn. App. 789, 808, 274 P.3rd 1075 (2012)8

4105 1st Ave. South Investments, LLC v. Green Depot
179 Wash. App. 777, 321 P.3rd 254 (2011)8

City of Richland v. Wakefield
186 Wn2d 596, 380 P.3rd 459 (2016)9, 10, 12

State v. Blazina
182 Wn.2d 827, 344 P.3d 680 (2015) 9, 10

STATUTES

RCW 4.84.330 1, 5, 7, 12
RCW 6.13 and 6.1511

OTHER AUTHORITIES

GR 344, 9, 10
24 CFR 966.6(h) 9
24 CFR
982.552(c)(1)(v)(2012).....11

APPENDIX

PHA Policy
24 CFR 966.6(h)
24 CFP 982.552

INTRODUCTION

Pursuant to a forcible entry and detainer petition filed in the Clallam county superior court by the Peninsula Housing Authority (PHA), a show cause hearing was held on June 3, 2016. Ms. Lee Daniels was the respondent. Premised upon the oral agreement of the parties, Judge Brian Cougenhour issued a writ of restitution but stayed execution of the writ based upon Ms. Daniel's agreement to pay the remainder owed in rent and late fees by June 6, 2016. Payment was made and Ms. Daniels continued her tenancy.

PHA requested a second hearing for an award of attorney fees on October 21, 2016, Judge Christopher Melly presiding. Based upon his reading of the lease language, RCW 4.84. 330 and emerging Washington case law, he denied any attorney fees. PHA filed for reconsideration and Judge Melly ordered payment of \$100 as attorney fees.

STATEMENT OF FACTS

The Peninsula Housing Authority (PHA), a Clallam county federally subsidized entity, provides low income tenants safe and affordable housing. PHA filed a petition for forcible entry and detainer against Ms. Daniels. A show cause hearing was held on June 3, 2016 in the Clallam county superior court, the Honorable Brian Coughenour presiding.

PHA stated that Ms. Daniels was served with notice to pay or vacate on May 18, 2016. (RP p.4) Ms. Daniel's attorney interrupted and stated that rent had been paid into the court registry that morning in the amount of \$556.00. (RP pgs. 4-5) Ms. Daniel's attorney stated, "...I'm representing a single woman, disabled, whose been renting since July 1, 2015. Her only income is from spousal support, which is always late in coming and irregular. Ms. Daniels has always paid her rent and paid the late fees as evidenced by the PHA's own ledger." (RP p.6)

Ms. Daniels anticipated a problem with the rent payment, contacted PHA's office and offered a repayment agreement. (RP p.6) She attempted to pay May's rent but was rebuffed by PHA. (RP p.7) Ms. Daniels paid \$556.00 into the court registry reflecting her rent of \$496 plus late fees. Ms. Daniel's attorney argued that the PHA could have avoided the eviction "...by simply as they have done virtually every month before now excepting (sic) rent, plus late charges." (RP p.8) Continuing Mr. Robins argued; "...Equity requires a balancing of all the circumstances. Here, acceptance of rent, plus the late charges, will make the

Plaintiff whole. More importantly it will not evict a single, disabled woman from Federal housing with the subsequent result that she is not eligible for federal housing for a significant period of years and allow her to continue living in a safe environment.” (RP p.8)

Mr. Robins further stated that Ms. Daniels ex-husband attempted to pay the remainder of amount due, \$396 (\$941-\$556) but due to a problem with the clerk’s office, the payment was credited to a criminal account. (RP p.10) In response to Ms. Daniel’s argument that the PHA had consistently accepted late payment of rent plus late fees, PHA argued that the lease did not allow for waiver even though they had accepted late rent for one and half years. (RP p. 12)

The judge ruled, “...I am going to exercise equitable powers here and I’m going to sign the order but she has to have the full amount which is the \$556, plus the \$396.35, whatever that totals out to be... Yeah, \$941, that has to be in and then your June rent is due in couple of days, really frankly. So, I’ll sign the order for the issuance of writ with the oral understanding that there’ll be no execution of the writ, if the full amount of \$941.00 is in the court registry by the end of business day on Monday.” (RP p.14)

Upon PHA’s request for attorney fees, a second hearing was held on October 21, 2016, Honorable Christopher Melly presiding. PHA sought \$2,246.40 in attorney fees. Judge Melly pointed out, “The order was obtained June the 3rd and your affidavit starts July 25th.... MS. MAHANEY: This is the wrong affidavit, Your Honor.” (RP p.17)

Argument followed and Mr. Robins stated, “The clear trend in Washington, GR34, a recent September case out of the Supreme Court about legal fine obligations, that we shouldn’t be imposing impossible judgments on low income people, that they’ll never be able to pay and more importantly, that the consequences from the state (sic) was ineligibility for future public housing are horrendous.” (RP p.18)

Ms. Daniels continued her tenancy after the hearing, made three reasonable accommodation requests to adjust the due date of her rent and eventually gave notice to voluntarily vacate on August 29, 2016. (RP p.19) Mr. Robins argued., “...The court sits as a statutory court and also as an equity Court. Is it equitable and fair to put a financial burden on a social security recipient who will realistically never to be able to pay it off?” (RP p. 20)

Judge Melly gave his opinion, “...I’m not really sure there’s really a distinction between civil clients and criminal defendants with regard to the ability to pay. The Courts of Appeals and the Supreme Court have been incredibly aggressive over the course of the last two years...In this particular case, Ms. Daniels is a social security recipient. She gets about a \$1,000 a month. I’m not sure that the court’s in a position to make any award to Peninsula Housing Authority with regard to recovering.” (RP pgs. 20-21)

PHA filed a notice of reconsideration. Subsequently the court issued a memorandum decision awarding \$100 to the PHA. PHA appealed to this Court.

ASSIGNMENT OF ERROR

A. Assignment of Error

The trial court correctly interpreted vague lease language, the requirement of RCW 4.84.330 to have a “prevailing party” and properly considered the equities of the case and denied saddling a social security recipient with an attorney fee award of \$2,246.40.

B. Issue Pertaining to the Assignment of Error.

Did the trial court abuse its discretion in the attorney fee award?

STANDARD OF REVIEW

A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds or exercised for untenable reasons.

Council House, Inc. v Hawk, 136 Wash. App. 153, 156, 147 P.3rd 1305 (2006).

ARGUMENT

The Peninsula Housing Authorities’ policy is:

It is the mission of the Housing Authority of the County of Clallam to promote adequate affordable housing; empower residents as well as staff to be self-sufficient through knowledge and economic opportunity; and foster effective partnerships with other resource agencies and the communities we serve in order to provide clean, sanitary, well-maintained suitable living environments for families below median income which are free from drugs, criminal activity and discrimination. (Appendix)

The Peninsula Housing Authority (PHA) sought to evict Ms. Daniels from public housing. At a show cause hearing on June 6, 2016 the trial court issued a

writ of restitution but, based upon the oral agreement of the parties, stayed execution of the writ premised upon Ms. Daniels paying the remainder of her rent into the court registry. She paid the full amount of rent plus late fees on the following Monday, June 9, 2016. She continued her tenancy for months before voluntarily vacating in August 2016. PHA argues that the trial court abused its discretion by limiting their attorney fees to \$100.00 dollars.

The lease language states, “In the event that a suit or action is brought by either party against the other, the Court shall award attorney fees and costs as **appropriate.**” (emphasis added) The word “appropriate” may be defined as; especially suitable or compatible. www.merriawebster.com/dictionary/appropriate PHA drafted the lease. Any ambiguity in the lease must be construed against the landlord who supplied it. *McGary v Westlake Investors*, 99 Wn. 2d 280, 287, 661 P 2d 971 (1983). The term “ambiguous” in a contractual context is defined as that which is capable of being understood in either of two or more possible senses. *McGary* at headnote 5 In *Duvall Highlands LLC v Elwell*, 104 Wash. App. 763, 19 P 3rd 1051 (2001) headnotes 8 and 9 read, “The interpretation of a lease is a question of law reviewed de novo” and “Ambiguities in a lease agreement must be construed against the one who prepares the lease agreement, and the court will adopt the interpretation that is most favorable to the lessee.”

The salient facts before the trial court were PHA’s request for \$2,246.40 in attorney fees for an eviction that was settled; that Ms. Daniels was eligible for Social Security Disability; that Ms. Daniels received \$1,000 a month in spousal

maintenance and the fact that she resides in subsidized housing which indicated to the trial judge her inability to meet her basic housing needs.

An award of attorney fees must be based upon contract, statute or recognized ground in equity. *Hertz v Riebe*, 86 Wash. App. 102, 105, 936 P 2d 24 (1997) citing *Seattle First Nat'l Bank v Siebol*, 64 Wash. App. 401, 409, 824 P 2d 1252 review denied, 119 Wash 2d 1010, 837 P.2d 386 (1992).

PHA's first claim is that there is a contractual basis to attorney fees and the trial court agreed. Further, PHA claimed that there was a statutory basis, namely RCW 4.84.330, for the award of attorney fees and the trial court agreed. However, the trial court disagreed that an award of \$2,224.60 in attorney fees for a low income tenant who reached a settlement agreement with PHA was appropriate. Thus the trial court had three threshold issues; first, was the PHA a "prevailing party" under RCW 4.84.330? Second, was the lease language referencing payment of attorney fees as "appropriate", ambiguous and subject to interpretation? Third, was there an equitable basis premised upon the Washington state's evolving law as to the impoverishment of low income litigants, to limit the award of attorney fees?

In any action on a contract which allows for attorney fees incurred to enforce the contract provisions, attorney fees shall be awarded to the "prevailing party". RCW 4.84.330 The statute section defines a prevailing party as "...the party in whose favor final judgment is rendered." This provision has been interpreted as the party who substantially prevailed. *Marine Enters., Inc. v Security Pac. Trading Corp.*, 50 Wash App. 768, 772, 750 P. 2d 1290, review

denied, 111 Wash. App. 1013, (1988). Accordingly, if both parties prevail on a major issue, neither is a prevailing party. *Wesche v Martin*, 64 Wash.App. 1. 13, 822 P.2d 812 (1992); *Marine Enters.*, 50 Wash. App. At 773. Application of the statute focuses on the relief afforded the parties whether or not the underlying clause provides for fees. *Hertz*, at 105.

PHA filed an unlawful detainer petition seeking the eviction of Ms. Daniels and a show cause hearing was held. Ms. Daniels owed \$994 in back rent and late fees. Prior to the show cause hearing she paid \$550 and her ex-husband attempted to pay the balance remainder prior to the show cause hearing. However, the Clallam county clerk's office mislabel the payment as "criminal" thus the payment did not show on the court rent registry as being paid. The trial judge, upon hearing the oral arguments of both parties, issued a writ of restitution but stayed execution of the writ based upon Ms. Daniel's payment for the remainder on the rent by the next Monday, June 9, 2016. Ms. Daniels made the payment and she maintained her tenancy for three more months before she voluntarily vacated her residence.

Both parties may be seen as having prevailed: PHA had a writ of restitution issued but there was no final judgment against Ms. Daniels. Ms. Daniels paid what was due and she continue her tenancy. PHA cannot be determined to be the prevailing party since their petition sought to evict Ms. Daniels from her home and that did not happen. Further, PHA was compelled to allow Ms. Daniels to continue her tenancy. Ms. Daniels prevailed to the extent that she was not evicted from her home. Upon the agreement of the parties, it may

be argued that neither party prevailed. In a dispute between a landlord and a tenant the “right to possession” is the primary issue in an unlawful detainer case. *Angelo Prop. Co., LP v Hafiz*, 167 Wn App. 789, 808, 274 P.3d 1075 (2012) see also *4105 1st Ave. South Investments, LLC v Green Depot*, 179 Wash.App. 777, 321 P 3d 254 (2011) headnote 8, “Primary issues in an unlawful detainer action is the question of possession and related issues such as restitution of the premises and rent.” See also *4105 1st Ave. at 786-787* While the writ of restitution was issued, Ms. Daniels maintained possession of the premises thus may be determined to be the prevailing party.

PHA, as a provider of federally subsidized rents, is prohibited from lease provisions such as, “Tenant chargeable with cost of legal actions regardless of outcome....” 24 CFR 966.6 (h) (Appendix) Thus a PHA cannot simply draft a lease provision that strips a reviewing court of the discretion as to what amount of attorney fees should be awarded. The PHA interpreted that prohibited CFR language in their lease language as limiting attorney fees to “as appropriate”. As the Judge Melly wrote, “When authorized by contract, the determination of a reasonable attorney fee award is a matter of discretion of the trial court.” CP 29: p.2 Thus Judge Melly, considering all the various factors and considering the word “appropriate”, exercised his reasonable discretion in the attorney fee award decision.

The trial court based part of its decision by reasoning by analogy. First, the court noted, in the criminal context, that there was “...a growing body of law with regard to judicial impoverishment of litigants.” CP 29: p.3 The court

concluded, "...it would be an anomaly for the court to treat poor people in the criminal context, who have violated the law, more favorably than poor people in the civil context who are otherwise law-abiding citizens albeit economically distressed." CP 29: p.3

The trial court further buttressed its analogous reasoning to consideration of General Rule 34 (GR 34) and *City of Richland v Wakefield*, 186 Wash. 2d 596, 380 P 3rd 459 (2016). The Washington Supreme Court in *Wakefield* ruled that in considering imposition of Legal Financial Obligations (LFO), the court directed attention to *State v Blazina*, 182 Wash. 2d 827, 344 P.3d 680 (2015), "...courts can and should use GR 34 as a guide for determining whether someone has an ability to pay costs. GR 34 is a court rule designed to simplify the process for determining whether a person is indigent for purposes of court and clerk's fees and charges in civil cases." *Wakefield* at 607 Thus the Supreme Court reasoned by analogy that a civil rule, GR 34, can apply to criminal cases. Concomitantly, the trial judge's use of *Wakefield* (criminal LFOs) to determine a civil issue was appropriate.

PHA, for the first time, raises the "issue" of Ms. Daniel's income. Beginning on page two of their brief, PHA repeatedly characterizes Ms. Daniel's as; "...**supposed** economic status...the record does **not include any proof** of Tenant's economic status (PHA brief p.5)...Although the trial court **might deem it virtuous** to make a decision about enforcing a contract based on one party's **supposed** financial situation (PHA brief p.10) ...the record contained only **vague**,

speculative information related to Tenant's financials. (PHA brief p.11)

(emphasis added)

PHA only subsidizes low income tenants, Ms. Daniels qualified under PHA's income guidelines due to her continued tenancy. Both trial judges cited Ms. Daniel's poverty. Unfortunately, Ms. Daniels fully qualifies to be viewed as poor. PHA's mean hearted doubts as to her poverty are without a basis.

PHA argues that the trial court's decisions "...undermines fundamental principles of contract law". (PHA brief p.11) They further argue, "... Washington courts do not allow parties whose rights rest upon a written, **unambiguous** contract to claim they did not read or did not understand the contracts terms." (PHA brief p. 12) (emphasis added) PHA alleges that Judge Melly "essentially" re-wrote the contract. (PHA brief p.13)

The lease was written by the PHA and they chose to limit the award of attorney fees to what is "appropriate" or fitting. The trial court, considering that the parties essentially settled the matter, considering that Ms. Daniels maintained possession of the premises and considering the poverty of Ms. Daniels, ruled that not considering her economic status "...might consign the defendant to a continuation, or even possibly, a worsening, of her poverty and would, indeed, fly in the face of the goals of the plaintiff to provide affordable housing." CP 29: p.4 As Judge Melly concluded, "The amount awarded herein confirms the existence of a contractual, and statutory, obligation on the part of the defendant and only dims, but does not extinguish, the light at the end of her tunnel." CP 29: p.5

PHAs last argument is premised upon the proposition that Ms. Daniels has “protection” under Washington law mitigating their desire to have her pay \$2,246 in attorney fees. They argue that under RCW 6.13 and 6.15, “...there are existing procedures related to civil judgment enforcement designed to protect low income civil judgment debtors.” (PHA brief p.11) This argument is disingenuous. Had the trial court imposed attorney fees of \$2,246 upon Ms. Daniels, she would be ineligible for any federally subsidy until the debt was paid. For example, PHA may deny admission to its voucher programs for a debt currently owed to it or to any other PHA. 24 CFR 982.552 (c) (1) (v) (2012) (Appendix) Thus, until Ms. Daniels paid the full amount of \$2,246 out of her monthly award of spousal maintenance of \$1,000 she would remain ineligible for public housing subsidies and be subject to paying market rent for a home.

CONCLUSION

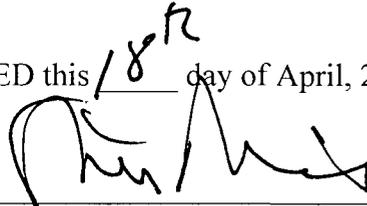
Abuse of discretion is a well-trod appellate road. Was Judge Melly’ s decision manifestly unreasonable or based upon untenable grounds or untenable reasons? To the contrary, his decision was a blend of traditional contract interpretation of ambiguous lease language, an accurate reading of the necessity under RCW 4.84.330 to have a “prevailing party” and an enlightened analogous reasoning derived from GR 34 and *Wakefield*. Shorn of legal argument, it is difficult to endorse consigning Ms. Daniels to a type of debt purgatory-having limited income but destitute enough to be denied public housing. What does the PHA gain by getting an attorney award that is virtually unrecoverable but has life

changing ramifications for Ms. Daniel's? Ms. Daniels respectfully requests that the appeal be denied.

REQUEST FOR ATTORNEY FEES

Pursuant to RAP 18.1 Ms. Daniels respectfully requests, that should she prevail in this appeal, that reasonable attorney fees should be awarded. RCW 4.84.330 Ms. Daniels is represented by a civil legal services organization that represents low income clients in civil litigation cases. She is a single woman, eligible for Social Security Disability payments and has very limited spousal maintenance income.

RESPECTFULLY SUBMITTED this 18th day of April, 2017.



Steve Robins, WSBA #29431
Attorney for Respondent, Lee Ann Daniels
408 East 5th Street
Port Angeles, WA 98362

APPENDIX

PHA Policy

24 CFR 966.6(h)

24 CFR 982.552

Formal actions of the PHA are taken through written resolutions, adopted by the board and entered into the official records of the PHA.

The principal staff member of the PHA is the executive director (ED), who is selected and hired by the board. The ED oversees the day to day operations of the PHA and is directly responsible for carrying out the policies established by the commissioners. The ED's duties include hiring, training, and supervising the PHA's staff, as well as budgeting and financial planning for the agency. Additionally, the ED is charged with ensuring compliance with federal and state laws, and program mandates. In some PHAs, the ED is known by another title, such as chief executive officer or president.

1-I.C. PHA MISSION

The purpose of a mission statement is to communicate the purpose of the agency to people inside and outside of the agency. It provides the basis for strategy development, identification of critical success factors, resource allocation decisions, as well as ensuring client and stakeholder satisfaction.

PHA Policy

It is the mission of the Housing Authority of the County of Clallam to promote adequate affordable housing; empower residents as well as staff to be self-sufficient through knowledge and economic opportunity; and foster effective partnerships with other resource agencies and the communities we serve, in order to provide clean, sanitary, well-maintained suitable living environments for families below median income which are free from drugs, criminal activity and discrimination.

1-I.D. THE PHA'S COMMITMENT TO ETHICS AND SERVICE

As a public service agency, the PHA is committed to providing excellent service to all public housing applicants, residents, and the public. In order to provide superior service, the PHA resolves to:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing in good repair – in compliance with program uniform physical condition standards – for very low- and low-income families.
- Achieve a healthy mix of incomes in its public housing developments by attracting and retaining higher income families and by working toward deconcentration of poverty goals.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.
- Promote fair housing and the opportunity for very low- and low-income families of all races, ethnicities, national origins, religions, ethnic backgrounds, and with all types of disabilities, to participate in the public housing program and its services.

| |
|---|
| Code of Federal Regulations |
| Title 24. Housing and Urban Development |
| Subtitle B. Regulations Relating to Housing and Urban Development |
| Chapter IX. Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Refs & Annos) |
| Part 966. Public Housing Lease and Grievance Procedure (Refs & Annos) |
| Subpart A. Dwelling Leases, Procedures and Requirements (Refs & Annos) |

24 C.F.R. § 966.6

§ 966.6 Prohibited lease provisions.

Currentness

Lease clauses of the nature described below shall not be included in new leases between a PHA and a tenant and shall be deleted from existing leases either by amendment thereof or execution of a new lease:

- (a) Confession of judgment. Prior consent by the tenant to any lawsuit the landlord may bring against him in connection with the lease and to a judgment in favor of the landlord.
- (b) Distraint for rent or other charges. Agreement by the tenant that landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs the obligation which the landlord has determined the tenant has failed to perform.
- (c) Exculpatory clauses. Agreement by the tenant not to hold the landlord or landlord's agent liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representatives or agents.
- (d) Waiver of legal notice by tenant prior to actions for eviction or money judgments. Agreements by the tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed, thus preventing the tenant from defending against the lawsuit.
- (e) Waiver of legal proceedings. Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred without notice to the tenant or any determination by a court of the rights and liabilities of the parties.
- (f) Waiver of jury trial. Authorization of the landlord's lawyer to appear in court for the tenant and waive the right to a trial by jury.

§ 966.6 Prohibited lease provisions., 24 C.F.R. § 966.6

(g) Waiver of right to appeal judicial error in legal proceeding. Authorization to the landlord's lawyer to waive the right to appeal for judicial error in any suit or to waive the right to file a suit in equity to prevent the execution of a judgment.

(h) Tenant chargeable with cost of legal actions regardless of outcome. Provision that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.

SOURCE: 40 FR 33402, Aug. 7, 1975; 49 FR 6714, Feb. 23, 1984; 53 FR 33304, Aug. 30, 1988; 53 FR 40221, Oct. 14, 1988; 53 FR 44876, Nov. 7, 1988; 54 FR 6886, Feb. 15, 1989; 56 FR 922, Jan. 9, 1991; 56 FR 51576, Oct. 11, 1991; 61 FR 13273, March 26, 1996; 66 FR 28802, May 24, 2001, unless otherwise noted.

AUTHORITY: 42 U.S.C. 1437d and 3535(d).

Notes of Decisions (15)

Current through April 6, 2017; 82 FR 16743.

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.

WESTLAW

Code of Federal Regulations

Title 24. Housing and Urban Development

Subtitle B. Regulations Relating to Housing and Urban Development

§ 982.552 PHA denial or termination of assistance for family.

Code of Federal Regulations Title 24 Housing and Urban Development Effective December 16, 2016 (Approx. 8 pages)

Part 982. Section 8 Tenant-Based Assistance: Housing Choice Voucher

Program (Refs & Annos)

Subpart L. Family Obligations: Denial and Termination of Assistance (Refs &

Annos)

Effective: December 16, 2016

24 C.F.R. § 982.552

§ 982.552 PHA denial or termination of assistance for family.

Currentness

<For compliance date(s) of amendment(s) to subsection (c)(2)(v), see 81 FR 80724; 81 FR 87812.>

(a) Action or inaction by family—

(1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or § 982.553. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures

(4) This section does not limit or affect exercise of the PHA rights and remedies against the owner under the HAP contract, including termination, suspension or reduction of housing assistance payments, or termination of the HAP contract.

(b) Requirement to deny admission or terminate assistance.

(1) For provisions on denial of admission and termination of assistance for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents, see § 982.553.

(2) The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

(3) The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information in accordance with part 5, subparts B and F of this title.

(4) The family must submit required evidence of citizenship or eligible immigration status. See part 5 of this title for a statement of circumstances in which the PHA must deny admission or terminate program assistance because a family member does not

establish citizenship or eligible immigration status, and the applicable informal hearing procedures.

(5) The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 CFR 5 612.

(c) Authority to deny admission or terminate assistance.

(1) Grounds for denial or termination of assistance. The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see § 982.551). See § 982.553 concerning denial or termination of assistance for crime by family members

(ii) If any member of the family has been evicted from federally assisted housing in the last five years,

(iii) If a PHA has ever terminated assistance under the program for any member of the family.

(iv) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program (see also § 982.553(a)(1));

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

(viii) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(ix) If the family has engaged in or threatened abusive or violent behavior toward PHA personnel.

(x) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

(xi) If the family has been engaged in criminal activity or alcohol abuse as described in § 982.553.

(2) Consideration of circumstances. In determining whether to deny or terminate assistance because of action or failure to act by members of the family:

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

(iii) In determining whether to deny admission or terminate assistance for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant or tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol

rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(v) Nondiscrimination limitation and protection for victims of domestic violence, dating violence, sexual assault, or stalking. The PHA's admission and termination actions must be consistent with fair housing and equal opportunity provisions of 24 CFR 5.105, and with the requirements of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking).

(d) Information for family. The PHA must give the family a written description of:

(1) Family obligations under the program.

(2) The grounds on which the PHA may deny or terminate assistance because of family action or failure to act.

(3) The PHA informal hearing procedures.

(e) Applicant screening. The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

(Approved by the Office of Management and Budget under control number 2577-0169)

Credits

[60 FR 45661, Sept. 1, 1995; 61 FR 13627, March 27, 1996; 63 FR 23865, April 30, 1998; 64 FR 26650, May 14, 1999; 64 FR 43613, Aug. 11, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56911, 56915, Oct. 21, 1999; 65 FR 16823, March 30, 2000; 66 FR 28805, May 24, 2001; 70 FR 77744, Dec. 30, 2005; 73 FR 72345, Nov. 28, 2008; 75 FR 66264, Oct. 27, 2010; 80 FR 8247, Feb. 17, 2015; 81 FR 80817, Nov. 16, 2016; 81 FR 87812, Dec. 6, 2016] SOURCE: 59 FR 36682, July 18, 1994; 60 FR 34695, July 3, 1995; 60 FR 45661, Sept. 1, 1995; 61 FR 11119, March 18, 1996; 63 FR 23857, April 30, 1998, unless otherwise noted

AUTHORITY: 42 U.S.C. 1437f and 3535(d).

Notes of Decisions (97)

Current through April 6, 2017; 82 FR 16743.

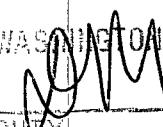
End of
Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works

FILED
COURT OF APPEALS
DIVISION II

2017 APR 20 AM 11:14

STATE OF WASHINGTON

BY 
DEPUTY

NORTHWEST JUSTICE PROJECT
April 17, 2017 – 9:00 AM
Transmittal Letter

Document Uploaded: 5-497727 Respondent's Brief and Certificate of Service

Case Name: Peninsula Housing Authority v. Lee Ann Daniels

Court of Appeals Case Number: 49772-7

The Document being Filed is:

Brief: Respondent's Brief and Certificate of Service

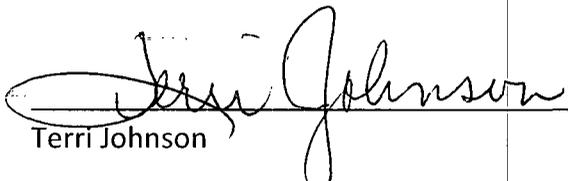
Sender Name: Steve Robins – Email: stever@nwjustice.org

A copy of this document has been emailed to the following email addresses:

1. armahaney@plattirwin.com
2. cjriffle@plattirwin.com

This document was also personally hand-delivered to Allison Mahaney and Christopher J. Riffle at Platt Irwin Law Firm, 403 S. Peabody Street, Port Angeles, WA 98362 on April 18th, 2017.

On April 19, 2017, this document was sent by Express Priority U.S. Mail to the Court of Appeals, Division II, Attention Mr. Derek Byrne, 950 Broadway, Suite 300, Tacoma, WA 98402.


Terri Johnson

RECEIVED
APR 20 2017
CLERK OF COURT OF APPEALS DIV II
STATE OF WASHINGTON