

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: HOUSING PART A

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XXXXX,

INDEX NO. L&T XXXXX

Petitioner,

-against-

XXXXX

JOHN DOE and JANE DOE
Brooklyn, NY,

Respondent(s).

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RESPONDENTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT

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PRELIMINARY STATEMENT

In this holdover proceeding, Petitioner is attempting to evict Respondent RF, a victim of domestic violence and stalking and a longtime tenant in Petitioner's federally subsidized housing project, for three inter-connected acts of her abusive ex-boyfriend L.E. in April and May 2006 that were either acts of domestic violence or stalking against her, or criminal activity directly related to the domestic violence or stalking. While Petitioner's eviction of Ms. F for the abusive behavior of Mr. E is common among landlords, it violates federal, state and local laws.

First, Congress recently enacted the Violence Against Women and Department of Justice Reauthorization Act of 2005 to address this exact situation. This law specifically forbids landlords of federally subsidized housing projects from evicting tenants for acts of domestic violence or stalking against them, or for criminal activity by third parties which is directly related to such violence.

Second, Petitioner's attempt to evict Ms. F, a victim of domestic violence and stalking, also constitutes sex discrimination in violation of the federal Fair Housing Act, the New York State Human Rights Law and the New York City Human Rights Law.

Finally, Petitioner alleges that the eviction is justified by Ms. F's failure to report her abuser on her most recent Section 8 recertification. However, Mr. E has never lived with Ms. F or been a member of her family, and she had no obligation, or indeed, basis, to include him on her recertification form.

Failure to dismiss the Petition and grant Respondent's motion for summary judgment would condone punishing victims of domestic violence for the criminal acts of

their abusers, endorse sex discrimination, and place women like Ms. F in the untenable position of facing homelessness to ensure their safety and that of their family members.

FACTS

The facts pertinent to this motion, which are also set forth in the accompanying affidavit of RF in support of motion for summary judgment, are as follows:

RF moved into _____ in or about May 1996. Her apartment is federally subsidized under the project-based Section 8 program and her share of the rent is \$152.00 per month. *See* Lease Amendment dated September 20, 2006, attached hereto as Exhibit A.

Ms. F lives with her three children: _____. Other than her children, no one else lives or has lived in the apartment with her.

When Ms. F moved into her apartment, she met LE, a tenant who resided at _____, the adjoining building managed by her landlord. In fact, Ms. F's building is commonly referred to as _____ and both _____ are owned by Petitioner and are joined together.

From 1996 through 2000, Ms. F was involved in an intimate relationship with Mr. E and they had a child together, Junior, who was born on January 16, 1997. Despite the fact that they were in a relationship, Mr. E had his own apartment in _____, and therefore each maintained their separate residences and never lived together or were married to each other.

During the time that Ms. F had a relationship with Mr. E, he was verbally and physically abusive towards her. Based in part on the abuse, Ms. F ended the relationship with Mr. E sometime in the year 2000. Unfortunately, even though the relationship had

ended, Mr. E abusive actions did not, and he has continued to abuse, stalk and harass Ms. F.

In 2002, Ms. F was walking down ___ Street in Brooklyn with her friend when they were confronted by Mr. E. Mr. E began screaming and threatening Ms. F and then punched her in the face, causing Ms. F to bleed and both of her eyes to turn black. Ms. F was taken to the hospital for treatment and it was eventually determined that she had a deviated septum from the punch that required surgery in November 2002.

On or about February 2003, Mr. E was evicted from his apartment at ____. but he has continued to be present in the building. Upon information and belief, Mr. E lived at _____ from birth until his eviction, and therefore has many friends and family in the buildings who allowed him access to the buildings even after he was evicted. In addition, the front doors to _____ have not had working locks in many years, so Mr. E was able to gain admittance to the buildings even after he was evicted.

Both prior to and after his eviction, Mr. E would come to Ms. F's door intoxicated and shout obscenities at her and carve these obscenities into her door. In addition, Mr. E would constantly loiter in the front of the building, even after he was evicted. Whenever he saw Ms. F walking into her building, he would yell obscenities at her and otherwise intimidate her. Initially, Ms. F would begin a conversation with a police officer on the street in the hope that this would scare Mr. E away from the front of her building. Eventually, Ms. F was forced to use alternative entrances to her building rather than confront the verbal abuse and on September 12, 2005, she even made a formal complaint to the police.

On or about the last week in April 2006, Mr. E again came to Ms. F's apartment and precipitated a series of acts referenced in Petitioner's court papers. At approximately 4 a.m., Mr. E, apparently intoxicated, began kicking and banging on Ms. F's door demanding to be let into her apartment. She was in the apartment with her three young children and based on the prior abuse, she was afraid to confront him. Instead, Ms. F contacted building security to send someone over to her apartment for assistance.

BR was the building security guard who responded to Ms. F's request for assistance and he confronted Mr. E. He asked Ms. F if Mr. E lived in the apartment or if Mr. E was on the lease. Ms. F stated that he did not live in the apartment and that he was not on the lease. Accordingly, Mr. R stated that if Mr. E did not leave the premises, he would call the police. Mr. R and Mr. E argued. When Mr. E refused to leave, Mr. R called the police and Mr. E left before the police arrived.

Upon information and belief, on or about May 5, 2006, Mr. E came to the buildings on _____ and confronted Mr. R about the incident at Ms. F's apartment in April 2006. After several words were spoken, Mr. E punched Mr. R in the mouth and Mr. R walked away. Mr. E returned shortly thereafter with a gun and proceeded to fire shots at Mr. R, missing each time he fired. Upon information and belief, Mr. E was arrested by the police, and upon his arrest stated that he was Ms. F's spouse and that he lived with her in her apartment.

Almost two and a half months later, Petitioner served a Ten (10) Day Notice of Termination (the "Notice") upon Ms. F seeking her eviction for the actions of Mr. E in April and on May 5, 2006. *See* Notice of Termination, attached hereto as Exhibit B. The Notice erroneously stated that the incidents in late April and May 5

occurred on the same night, and that the incident in April occurred in Ms. F's apartment. In addition, the Notice mistakenly asserted that Mr. E was Ms. F's spouse, member of her household or a guest on the night that he banged on Ms. F's door and also the day that he physically assaulted Mr. R.

The Notice also stated that Ms. F failed to place Mr. E on her Section 8 recertification form. *See* Notice of Termination, attached hereto as Exhibit B. Mr. E has never lived with Ms. F and therefore she had no obligation or basis to place him on her recertification forms. Ms. F has always placed her children, the only people who have ever lived with her, on her recertification forms. Upon information and belief, Mr. E is now living at _____ with his aunt. *See* Lease, attached hereto as Exhibit C.

Prior to commencing this proceeding, Petitioner never once attempted to discuss the matter with Ms. F. After she received the Notice, Ms. F went to the management office to discuss the eviction proceeding, and spoke with JT. Ms. T told Ms. F that she must go to court and that the management office would only discuss rent matters.

On or about August 14, 2006, Petitioner prepared a Notice of Petition and Petition and served them upon Ms. F. *See* Notice of Petition and Petition, attached hereto as Exhibit D. After several adjournments, Ms. F served an Answer to the Petition. *See* Answer, attached hereto as Exhibit E.

Since Mr. E's intimidating behavior in April 2006, he has not returned to Ms. F's apartment. However, she is still fearful of him. Several years ago, Ms. F asked Petitioner's predecessor in interest for a transfer to another building because of Mr. E. She was told that she could only move internally within the building. Ms. F continues to seek a transfer to another building but Petitioner has refused to consider this alternative.

In addition, Petitioner has never taken any steps to address Mr. E's behavior. Petitioner could have banned Mr. E from the buildings after he was evicted or instituted trespass or nuisance actions against him. Banning Mr. E would not prove difficult, since Petitioner hired security for the building at the beginning of 2006 -- the very security Ms. F contacted when Mr. E was banging on her door at 4 a.m. Nevertheless, instead of taking action to deal with the person actually causing problems and committing criminal acts, Petitioner preferred to evict Ms. F.

ARGUMENT

Rule 3212 of the C.P.L.R. provides that a motion for summary judgment shall be granted where "upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." C.P.L.R. § 3212(b). Summary judgment is designed to expedite civil cases, by removing claims that can be resolved as a matter of law from the trial calendar. *Andre v. Pomeroy*, 35 N.Y.2d 361, 362 N.Y.S.2d 131 (1974). Where no triable issue of fact exists, the Court should not be reluctant to employ the remedy of summary judgment. *Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 585 (1980); *Andre*, 35 N.Y.2d at 361.

To defeat a motion for summary judgment, one opposing the motion must "show facts sufficient to require a trial on any issue of fact." C.P.L.R. § 3212(b). The party in opposition must "produce evidentiary proof in admissible form to require a trial of material questions of fact on which he rests his claim." *Zuckerman*, 49 N.Y.2d at 562, 427 N.Y.S.2d at 598.

I. PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT, PETITIONER MAY NOT TERMINATE MS. F'S TENANCY BASED ON DOMESTIC VIOLENCE OR STALKING AGAINST HER, OR CRIMINAL ACTIVITY BY A THIRD PARTY RELATED TO THE DOMESTIC VIOLENCE OR STALKING.

Petitioner commenced the instant proceeding seeking to evict Ms. F, a tenant in Petitioner's federally subsidized housing project and a victim of domestic violence and stalking, for three inter-connected acts by her alleged "spouse" that occurred during and were related to a "domestic dispute."¹ However, the Violence Against Women and Department of Justice Reauthorization Act of 2005 ("VAWA 2005") specifically precludes Petitioner from terminating Ms. F's tenancy based on incidents of domestic violence or stalking against her, or criminal activity by a third party related to such domestic violence or stalking.

Petitioner's response to the domestic abuse and related criminal activity -- eviction of the victim of violence in an attempt to "get rid" of the problem -- is a common one among landlords providing federally subsidized housing, as Congress has recognized. *See* Violence Against Women and Department of Justice Reauthorization Act of 2005, 42 U.S.C. §§ 14043e(3) and (4). Congress also found that this response has serious consequences for women and their children who are dealing with violence. *Id.*

In response to this widespread problem, Congress enacted VAWA 2005, which contains provisions that specifically preclude Petitioner from terminating Ms. F tenancy based on incidents of domestic violence or stalking against her, or criminal activity by a third party related to such domestic violence or stalking. VAWA 2005 amended 42

¹ Ms. F has never been married and categorically denies that the individual identified in the Notice of Termination is her husband, a member of her household or was her guest. *See* Affidavit in Support of Motion for Summary Judgment, ¶¶ 8, 9, and 25, ("F Aff."). However, said dispute is immaterial and Petitioner's recitation of the facts may be deemed true solely for the purposes of this motion for summary judgment.

U.S.C. § 1437f to include specific protections for tenants in subsidized housing who are victims of domestic violence, dating violence or stalking. It provides that:

. an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence.

42 U.S.C. §§ 1437f(c)(9)(B) & (d)(1)(B)(ii). VAWA 2005 also amended the statute so that:

. criminal activity directly related to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking.

42 U.S.C. §§ 1437f(c)(9)(C)(i) & (d)(1)(B)(iii).

According to Petitioner's Notice, there are three inter-related incidents that are the basis for the eviction: 1) the "domestic dispute"; 2) Mr. E's physical altercation with the security guard; and 3) Mr. E's shooting at the security guard. *See* Notice of Termination, attached hereto as Exhibit B. As each incident is either an incident of domestic violence or stalking against Ms. F, or criminal activity by a third party related to such domestic violence or stalking, the protections of VAWA 2005 provide both an affirmative defense to the attempted eviction of Ms. F for any of these incidents, as well as the basis for her counterclaims, and her motion for summary judgment should be granted.

A. Petitioner's Termination of Ms. F's Lease Because of the Domestic Violence and Stalking Against Her is Unlawful Under VAWA 2005.

There is little doubt that the "domestic dispute" mentioned in the Notice as a basis for Ms. F's eviction is an incident of domestic violence and stalking within the meaning of

VAWA 2005. Indeed, that incident was merely the latest instance of a long pattern of domestic violence and stalking by Mr. E against Ms. F. Pursuant to VAWA 2005, “the term ‘domestic violence’ includes felony or misdemeanor crimes of violence committed . . . by a person with whom the victim shares a child in common.” 42 U.S.C. § 13925(6). “Stalking” is defined as “to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person” and in the course of or as a result of such “stalking,” that person or her immediate family are placed “in a reasonable fear of” death, “serious bodily injury,” or “substantial emotional harm.” 42 U.S.C. § 1437f(f)(10).

The person identified in the Notice is LE, the father of Ms. F’s child Junior. On the night identified in the Notice, Ms. F was in her apartment with her three children _____. See Affidavit in Support of Motion for Summary Judgment, ¶20. At approximately 4 a.m., Mr. E, apparently intoxicated, began banging and kicking Ms. F’s door demanding that he be let into the apartment.² *Id.* Ms. F was afraid to open the door and step into the hallway to confront Mr. E, so she called building security to address the situation. *Id.* When security guard BR arrived at her apartment, he confronted Mr. E and asked him to leave the premises. *Id.* at ¶21. Mr. E then argued with Mr. R and left the building after Mr. R called the police.³ *Id.*

Indeed, on the night of Mr. E’s appearance, Ms. F had every reason to be fearful of Mr. E based on their previous interactions. During the time that Mr. E and Ms. F were in an intimate relationship, from 1996-2000, Mr. E verbally and physically abused Ms. F.

² In the Notice, Petitioner asserts that the “domestic dispute” occurred in Ms. F’s apartment. See Notice of Termination, attached hereto as Exhibit B. Ms. F denies that Mr. E was in her apartment that night, but the discrepancy is immaterial to Ms. F’s motion for summary judgment and may be deemed true for the purposes of motion.

³ As discussed in section I.B., *infra*, Mr. E returned to the building approximately one week later to seek revenge on Mr. R for rendering assistance to Ms. F and asking Mr. E to cease and desist his stalking and domestic violence. Mr. E punched Mr. R and subsequently shot at him.

See F Aff. ¶10. Even after their relationship ended in 2000, Mr. E continued to verbally and physically abuse Ms. F, as is common in abusive relationships where the abuser refuses to relinquish control over the abused. *Id.* at ¶12. Despite being evicted from his apartment in the building on or about February 2003, Mr. E continued to sit in front of the entrance to the building with his friends, and would verbally abuse Ms. F whenever he saw her entering the building. *Id.* at ¶18. Just as in the “domestic dispute” incident cited by Petitioner, Mr. E would frequently bang on Ms. F’s door, shout obscenities at her, and carve obscenities into her door while intoxicated. *Id.* at ¶17.

Throughout this period, Petitioner took no action to address the situation, such as barring Mr. E from the building or commencing trespass or nuisance proceedings against Mr. E to keep him from the premises after his eviction.⁴ In fact, Petitioner even denied Ms. F’s request to transfer to another building. *Id.* at ¶31 and 32.

In or about July 2002, Mr. E escalated the level of abuse when he saw Ms. F walking with a male friend on ___ St., whereupon he struck her in the nose after shouting obscenities at her. *Id.* at ¶13. Ms. F was taken to the hospital, and eventually required surgery in November 2002 to repair the damage caused by Mr. E. *Id.* After that incident, Mr. E continued to verbally abuse Ms. F as she was walking into the building and she would be forced to use alternative entrances in order to avoid him. *Id.* at ¶18. This continued pattern of abuse culminated in the April and May 2006 incidents discussed above.

⁴ VAWA 2005 even permits landlords to bifurcate a lease and evict a tenant who is a perpetrator of domestic violence or stalking, while permitting the tenant who is a victim of domestic violence to remain. See 42 U.S.C. § 1437f(c)(9)(C)(ii). Although Mr. E was not listed on Ms. F’s lease, it is notable that Petitioner failed to take advantage of *any* of the numerous available options to address Mr. E’s behavior.

These acts satisfy VAWA 2005's definition of stalking and domestic violence against Ms. F. Petitioner terminated Ms. F's lease due to the "domestic dispute." See Notice of Termination, attached hereto as Exhibit B. Because the "domestic dispute" was the latest in a chain of incidents constituting domestic violence and stalking against Ms. F, Petitioner's eviction is action against a victim of domestic violence and stalking that is unlawful under VAWA 2005. See 42 U.S.C. § 1437f(c)(9)(B). Accordingly, the Petition should be dismissed and Ms. F motion for summary judgment granted as to her VAWA 2005 claims.

B. Petitioner's Termination of Ms. F's Lease Because of Mr. E's Assault on and Shooting at the Security Guard is Unlawful Under VAWA 2005.

In a similar manner, Petitioner's attempt to evict Ms. F for Mr. E's altercations with and shooting at the security guard in May 2006, following the pattern of abuse and the "domestic dispute," is also unlawful under VAWA 2005 as it constitutes an eviction based upon "criminal activity directly related to domestic violence...or stalking." See 42 U.S.C. § 1437f(c)(9)(C)(i).

As discussed previously, Ms. F was fearful of confronting Mr. E when he was banging on her door at 4 a.m. and instead requested the assistance of security, as she had been instructed to do by management. See F Aff. ¶20. Ms. F remained in her apartment until BR, a security guard in the building, arrived to address the situation. *Id.* at ¶21. Mr. R confronted Mr. E and asked him to leave the premises. *Id.* Based on Mr. R's assistance to Ms. F and his request that Mr. E cease and desist his stalking and domestic violence, Mr. E punched Mr. R and subsequently shot at him. *Id.* at ¶23

Both Mr. E's punching and shooting at the security guard were directly related to Mr. E's attempt to gain access to Ms. F's apartment at 4 a.m. the week before. Had Mr. E not attempted to gain access, Ms. F would never have called security. Had Ms. F never called security, Mr. R would never have confronted Mr. E and the ensuing altercations would not have transpired.

Pursuant to VAWA 2005, criminal activity of a third party directly related to domestic violence or stalking engaged in by a person under the control of the abused tenant may not form the basis for the eviction of an abused tenant. Petitioner has violated VAWA 2005 by attempting to evict Ms. F and terminate her tenancy for the criminal activity of Mr. E (a person allegedly under her control), which was directly related to domestic violence and stalking.⁵ Accordingly, the Petition must be dismissed as to these claims and summary judgment entered in Ms. F's favor.

II. PETITIONER'S EVICTION OF MS. F CONSTITUTES SEX DISCRIMINATION IN VIOLATION OF THE FAIR HOUSING ACT, THE NEW YORK STATE HUMAN RIGHTS LAW, AND THE NEW YORK CITY HUMAN RIGHTS LAW.

Petitioner's eviction of Ms. F, a victim of domestic violence and stalking, for the acts of her abuser constitutes disparate impact and intentional sex discrimination in violation of the federal Fair Housing Act, as amended ('FHA'), 42 U.S.C. §§ 3604(a) and (b); the New York State Human Rights Law ('NYSHRL'), N.Y. Exec. Law §§ 296.2-a(a) and (b) and §§ 296.5(a)(1) and (2); and the New York City Human Rights Law ('NYCHRL'), N.Y.C. Admin. Code, §§ 8-107(5)(a)(1) and (2).⁶ The anti-discrimination

⁵ Ms. F denies that Mr. E is a household member, guest or a person otherwise under her control. FAff. ¶25. Assuming either set of facts, Petitioner has violated VAWA 2005, as it is equally clear that evicting Ms. F, a person who had no role in the criminal activity that motivated the eviction, is also impermissible under VAWA 2005.

⁶ Federal precedent interpreting the Fair Housing Act is applicable to housing discrimination claims under the New York State Human Rights Law and the New York City Human Rights Law. *See Tyler v.*

protections of these laws provide both an affirmative defense to Petitioner's attempted eviction, warranting dismissal of this proceeding, and the basis for Ms. F's counterclaims. Because Petitioner cannot meet its burden of demonstrating that its actions were not discriminatory, the Petition should be dismissed and Ms. F's motion for summary judgment should be granted.

A. Evicting Female Tenants For the Criminal Acts of Their Abusers Has a Disparate Impact on Women.

Petitioner has discriminated against Ms. F by evicting her pursuant to a practice that has a disparate impact upon women, thereby violating the FHA, the NYSHRL, and the NYCHRL. In order to establish a prima facie case of disparate impact housing discrimination, the victim of discrimination must show“(1) the occurrence of certain outwardly neutral practices and (2) a significantly adverse or disproportionate impact on persons of a particular type produced by the [landlord's] facially neutral acts or practices.” *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565, 575 (2d Cir. 2003) (elements of disparate impact housing claim under the FHA). *See People of the State of New York v. New York City Transit Authority*, 59 N.Y.2d 343, 349 (1983) (elements of disparate impact employment claim under NYSHRL); N.Y.C. Admin. Code § 8-107(17)(a)(1) (elements of disparate impact claim under NYCHRL).

Here, Petitioner engaged in a facially neutral practice: evicting a tenant living in subsidized housing for violations of her lease due to domestic violence or stalking against her or the criminal acts of an alleged guest, household or family member. The fact that

Bethlehem Steel Corp., 958 F.2d 1176, 1180 (2d Cir. 1992) (“New York courts have consistently looked to federal caselaw in expounding the [state] Human Rights Law”); *Lynn v. Vill. of Pomona*, 373 F. Supp. 2d 418, 434 (S.D.N.Y. 2005) (“The elements of plaintiffs' claims under the NYSHRL and the County Human Rights Law are the same as that under the FHA. Therefore, our above analysis applies equally to those claims....”); *Hughes v. The Lillian Goldman Family, LLC*, 153 F. Supp. 2d 435, 453 n.11 (S.D.N.Y. 2001) (“Stating a housing discrimination claim under the [New York State] HRL or the NYCHRL, however, is substantially similar to stating a housing discrimination claim under the Fair Housing Act.”).

the policy may have been unwritten or a single instance is irrelevant to whether it has discriminatory disparate impact. *See, e.g., Council 31 v. Ward*, 978 F.2d 373, 377 (7th Cir. 1992) (“To the extent that members of a protected class can show significant disparities stemming from a single decision, there is no reason that decision should not be actionable.”); *Winsor v. Regency Prop. Mgmt., Inc.* No. 94 CV 2349 (Wisc. Cir. Ct. Oct. 2, 1995) (holding that a single decision to refuse to rent an apartment to prospective tenants because they were victims of domestic violence sufficient to state a sex discrimination claim under a disparate impact theory).

While facially neutral, it is indisputable that Petitioner’s practice has a disproportionate negative impact upon the protected class to which Ms. F belongs, women. Both national and New York studies confirm that the vast majority of victims of domestic abuse are women. For example, a widely-respected national study conducted by the U.S. Bureau of Justice Statistics found that 85% of victims of intimate partner violence are women. *See* U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics Crime Data Brief, *Intimate Partner Violence, 1993-2001* at 1 (February 2003).

Moreover, women living in rental housing experience intimate partner violence at more than three times the rate of women who own their homes, Callie Marie Rennison & Sarah Welchans, U.S. Dept of Justice, NCJ 178247, *Intimate Partner Violence* at 5 (2000), and women with annual household incomes of less than \$7,500 were nearly seven times more likely than women with annual household incomes of over \$7,500 to experience domestic violence. *Id.* at 4.

Stalking is also a form of violence disproportionately experienced by women: they constitute 78% percent of all stalking victims. Patricia Tjaden & Nancy Thoennes, Nat'l Inst. of Just. & Ctrs. for Disease Control and Prevention, *Stalking in America: Findings from the National Violence Against Women Survey* at 2 (April 1998). Women are more likely than men (59 percent and 30 percent, respectively) to be stalked by current or former intimate partners. *Id.* Significantly, 43% of female victims were stalked by former partners *after* the intimate relationship ended. *Id.* at 6. Similarly, a study found that 89% of the domestic violence homicides committed in New York State from 1990-97 included "indications of prior abuse," while 19% of such homicides included indications of "prior non-physical abuse, such as stalking, telephone harassment and threats." New York State Commission on Domestic Violence Fatalities, *Report to the Governor* at 16 (October 1997).

Many domestic violence and stalking victims, the vast majority of whom are women, lose their housing based on the acts of their abusers. *See* 42 U.S.C. §§ 14043e(3) and (4) (finding women and families "are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence" and noting survey documenting cases where tenants have been "evicted because of the domestic violence crimes committed against [them]"); Public Advocate of New York City, *Safety Shortage: The Unmet Shelter And Housing Needs Of New York City's Domestic Violence Survivors* at 8 (March 2005) ("survivors searching for housing face discrimination from landlords who fear that batterers will find survivors in their new homes and create problems on the premises"); New York City Council, *Report of the Governmental Affairs Division on Int. No. 305* at 2 (Apr. 28, 2004) ("Abusers or stalkers

frequently follow victims to their homes, assault and harass victims in their homes and engage in other behaviors that undermine victims' security in their homes. In addition, victims face the danger of losing secure housing when property owners become aware of the problem. Advocates report that many victims attacked in their homes are served with eviction notices for 'allowing' criminal activity to occur on the premises?').

These statistics demonstrate the discriminatory effect that Petitioner's practice has on women as compared to men. Because women make up the vast majority of domestic violence and stalking victims, a policy that penalizes these victims in particular for the acts of their abusers affects disproportionate numbers of women among Petitioner's tenants. Indeed, the percentage of women victimized by domestic violence and stalking is likely higher among those subsidized housing tenants subject to Petitioner's practice, because, as noted above, women who live in rental housing with low incomes are far more likely to experience abuse than home-owning, more affluent women.

In light of these statistics, several courts and agencies around the country, including in New York, have concluded that housing policies and practices that discriminate against victims of abuse disparately impact women and violate the sex discrimination provisions of fair housing law. The New York Attorney General opined as early as 1985 that denial of rentals to persons based on their status as domestic violence victims has a discriminatory impact on women and therefore violates sex discrimination provisions of the New York State Human Rights Law. *See* Formal Op. No. 85-F15, 1985 N.Y. Op. Atty Gen. 45 (Nov. 22, 1985); *Cox v. Related Companies*, No. 11026/86 (N.Y. Sup. Ct. Monroe Cty Dec. 1, 1986) (order and judgment adopting legal analysis of 1985 N.Y. Op. Atty. Gen. 45). Significantly, in a case similar to the one

at issue, a landlord's policy that required eviction of victims of domestic violence because of an abuser's criminal activity was found to have a discriminatory impact on women under the federal Fair Housing Act. *United States v. CBM Group*, No. HUDALJ 10-99-0538-8 (HUD Ore. Apr. 16, 2001). *See also Winsor v. Regency Prop. Mgmt., Inc.* No. 94 CV 2349 (Wisc. Cir. Ct. Oct. 2, 1995) (holding that under Wisconsin fair housing law, modeled after federal Fair Housing Act, a landlord's single decision to refuse to rent an apartment to prospective tenants because they were victims of domestic violence was sufficient to state a sex discrimination claim under a disparate impact theory); *O'Neil v. Karahlais*, 13 M.D.L.R. 2004 (Mass. Comm'n Against Discrim. Oct. 21, 1991) (same with respect to Massachusetts law).

Since Respondent has established a prima facie case of discriminatory impact, the burden then shifts to Petitioner to demonstrate that its practice of evicting victims of violence for the acts of their abusers is compelled by a legitimate business objective. *See Tsombanidis*, 352 F.3d at 575; N.Y.C. Exec. Law § 8-107(17)(a)(2). A valid business objective defense shows that the challenged practice "bears a significant relationship to a significant business objective." N.Y.C. Exec. Law § 8-107(17)(a)(2). Petitioner cannot demonstrate any legitimate business objective sufficient to justify evicting Ms. F for the violence and criminal acts of her abuser.

Even if Petitioner's actions were motivated by a legitimate business objective, which they are not, many alternative policies were available to accomplish its objectives without discriminatory effects. *See Tsombanidis*, 352 F.3d at 575. First, Petitioner could have implemented the less drastic alternative of simply transferring Ms. F to another property it owned, instead of evicting her. Indeed, Ms. F requested a transfer on

a previous occasion as a way to escape Mr. E's abusive behavior and stalking, but Petitioner denied that request. F Aff. ¶31. Petitioner continued to refuse Ms. F's request for a transfer even after it instituted this proceeding. *Id.* at ¶32.

Second, instead of penalizing a longtime tenant in good standing, Petitioner could have taken action against the actual perpetrator, Mr. E, by barring him from the building or commencing a nuisance or trespass action against him. Although Mr. E continued, even after his 2003 eviction from the building, to loiter outside the building and enter the buildings -- on numerous occasions to harass Ms. F, F Aff. ¶17 and 18 -- at no time did Petitioner ever take steps to prevent Mr. E from entering the property. Petitioner failed to take even minimal steps to ensure its tenants' safety: the building entrance doors have not had locks for many years, *id.* at ¶16, and Petitioner did not hire building security until 2006. *Id.* at ¶33.

Petitioner cannot offer any evidence regarding necessity, cost, inconvenience, or other burdens to explain why it failed to transfer Ms. F, to take steps to bar Mr. E from the property, or to explain why evicting Ms. F was the appropriate action. *See Bronson v. Crestwood Lake Section 1 Holding Corp.*, 724 F. Supp. 148 (S.D.N.Y. 1989) (in Fair Housing Act disparate impact race discrimination case, rejecting defendant landlord's proffered business necessity for rental policy in part because it was not "reasonably necessary"). Petitioner's practice of evicting tenants for domestic violence and stalking against them and the criminal acts of their abusers disparately impacts women in violation of fair housing law. Accordingly, the Petition should be dismissed and Ms. F's motion for summary judgment should be granted.

B. Petitioner Evicted Ms. F, a Victim of Domestic Violence and Stalking, on the Basis of Intentional Sex Discrimination.

Ms. F can establish the elements of a prima facie case of intentional sex discrimination under the FHA, the NYSHRL, and the NYCHRL: she is a member of a protected class, women; she was qualified to rent the housing; she is being evicted; and the eviction occurred under circumstances giving rise to an inference of unlawful discrimination.⁷ *See Robinson v. 12 Lofts Realty, Inc.*, 610 F.2d 1032, 1038 (2d Cir. 1979); *Dunleavy v. Hilton Hall Apts. Co., LLC*, 789 N.Y.S.2d 164, 166 (App. Div., 2d Dep't 2005).

Here, Petitioner evicted Ms. F because it chose to believe the claim of a man who had been evicted from its property and had committed a criminal act against one of its employees over the word of Ms. F, a longtime female tenant in good standing. Petitioner's eviction is based on the assumption that Mr. E was Ms. F's household or family member or a guest, and that he resided with her. However, none of those assumptions are true, and the evidence supports the inference that Petitioner's willingness to believe Mr. E and its failure to ascertain the truth before evicting Ms. F was based a discriminatory motive.⁸

⁷ Ms. F need not show that a similarly situated tenant was treated differently, and better, in order to establish her prima facie case of sex discrimination. As the Second Circuit has noted, in some cases there are no persons similarly situated to the individual at issue. *Abdu-Brisson v. Delta Airlines, Inc.*, 239 F.3d 456, 467 (2d Cir. 2001). Accordingly, given the "flexible spirit" of the prima facie case requirement, an individual can create an inference of discrimination by other means. *Id.* at 468.

⁸ Any claim by Petitioner that the eviction was a legitimate nondiscriminatory practice to protect the health and safety of other tenants is significantly undermined by its own failure to address the situation expeditiously. Mr. E is alleged to have punched the building security guard and shot at him on May 5, 2006. Petitioner's ten-day notice of eviction is dated July 13, 2006, more than two months after the criminal act at issue. *See* Notice of Termination, attached hereto as Exhibit B. Petitioner did not file its holdover petition until August 14, 2006. *See* Petition, attached hereto as Exhibit D. Even assuming, *arguendo*, that Mr. E was her guest or household member, which he was not, Petitioner took more than two months to address the situation. If the health and safety of other tenants was in fact a serious concern, and if Ms. F had indeed violated her lease because of the criminal act and failing to report a change in her family composition, Petitioner surely would have acted more quickly to resolve the issue. Significantly,

Having established her prima facie case of intentional sex discrimination, the burden then shifts to Petitioner to demonstrate that Ms. F was evicted for legitimate, non-discriminatory reasons. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003) (applying *McDonnell Douglas* burden-shifting framework to housing discrimination claims brought pursuant to Fair Housing Act and New York State Human Rights Law); *Hughes*, 153 F. Supp. 2d at 453 n.11 (applying *McDonnell Douglas* burden-shifting framework to housing discrimination claims brought pursuant to Fair Housing Act, New York State Human Rights Law, and New York City Human Rights Law). Petitioner here may attempt to meet that burden by proffering two reasons. First, Petitioner may claim that Ms. F violated her lease by “willfully” failing to report a person allegedly residing with her as part of her family composition in violation of HUD regulations. Second, Petitioner may claim that Ms. F and/or “members of [her] household and/or [her] guests and/or persons under [her] control” engaged in criminal activity. *See Notice*.

Ms. F, however, can meet her burden of offering ample evidence to demonstrate that Petitioner’s proffered reasons for eviction are false and mere pretext for unlawful discrimination against a female victim of domestic violence and stalking. *See Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133, 119-20 (2000) (“[p]roof that the defendant’s explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive”). Therefore, the Petition should be dismissed and her motion for summary judgment should be granted.

Petitioner could have quickly addressed its safety concerns by barring Mr. E from the property and/or taking action against him. However, Petitioner failed to do so, instead penalizing Ms. F.

As previously discussed in section I.A., *supra*, Ms. F is a victim of domestic violence and stalking. Even more importantly, *Petitioner* believed Ms. F to be a victim of domestic violence and/or stalking. The Notice states that Ms. F was involved in a ‘domestic dispute’ in her apartment with someone who was her spouse or a household or family member. *See* Notice of Termination, attached hereto as Exhibit B. This belief that she was a victim of domestic violence and stalking colored *Petitioner’s* perceptions of Ms. F, caused it to impute various harmful gender stereotypes to her, and formed the basis of its discriminatory actions.

Most significantly, *Petitioner* utterly failed to make any effort to ascertain the relevant facts from Ms. F before moving to evict her. *Petitioner* easily could have had a meeting with Ms. F to ascertain whether Mr. E was in fact a member of her family or household or was a guest living with her, and to determine the exact circumstances surrounding the events of April and May 2006. However, *Petitioner* failed to do so, preferring to believe the word of a perpetrator of criminal acts over a longtime female tenant. If *Petitioner* had made any effort, it would have learned that in fact, Mr. E and Ms. F were never married and he was never a member of her household. F Aff. ¶8 and 9. The evidence in the record also shows Mr. E was not her “guest.” *Id.* at ¶21 and 25. Furthermore, there is no evidence in the record to support the claim that Mr. E resided with Ms. F. In contrast, Ms. F has stated that Mr. E has never resided with her during the time she lived at _____. *Id.* at ¶8 and 26. During the April 2006 incident, Ms. F told the security officer, BR, that Mr. E did not live with her and he was not on her lease. *Id.* at ¶21.

In short, Petitioner believed that the word of Mr. E, the perpetrator of the abuse and criminal acts on its property, was more credible than that of Ms. F, the victim of violence. After the April and May 2006 incidents, Petitioner accused Ms. F of lying during her HUD recertification process about her family composition and residents as an excuse to evict her. *See* Notice of Termination, attached hereto as Exhibit B. However, it is disingenuous for Petitioner to assert that Ms. F “willfully” failed to report the fact that Mr. E was living with her, since Petitioner never bothered to ascertain whether or not Mr. E was *in fact* her spouse or was residing with her. Tellingly, Petitioner did not make any attempt to learn the truth and simply chose to rely on Mr. E’s self-serving assertion at the time of his arrest, which is unsupported by any evidence. Ms. F had no duty to report Mr. E on her housing recertification and she has produced evidence demonstrating that Mr. E and Ms. F were never married, he was never family or household member or guest, and that he never resided with her.

By refusing to believe Ms. F, holding her responsible for Mr. E’s criminal act and evicting her for it, Petitioner is blaming a female victim for acts of her abuser and denying her access to housing, which constitutes unlawful sex discrimination in violation of federal and state laws. Denying housing to a victim of domestic violence, particularly based on actual or feared acts of the abuser, is a form of sex discrimination in violation of the NYSHRL. *See* Formal Op. No. 85-F15, 1985 N.Y. Op. Atty. Gen. 45 (Nov. 22, 1985) (addressing common stereotypes associated with abused women, finding that “the violent conduct of a spouse or other party should not be conclusively attributed to a battered woman so as to prevent her from obtaining housing;” and finding that a broad policy barring all victims of domestic violence from housing violates N.Y. Exec. Law §§

296.2-a(a) and (b) and 296.5(a)(1) and (2)). *See also Bouley v. Young-Sabourin*, 394 F. Supp.2d 675, 677 (D. Vt. 2005) (denying defendant landlord's motion for summary judgment, finding that plaintiff stated a case of intentional sex discrimination under the Fair Housing Act when, based on status as an abuse victim, her landlord issued an eviction notice less than 72 hours after her husband assaulted her).

Taken together, the evidence at hand demonstrates that purported lease violations were not the true reason for Ms. F's eviction. *See Reeves*, 530 U.S. at 119-20. Because Ms. F has carried her burden of demonstrating intentional sex discrimination in violation of federal, state and local laws, the Petition should be dismissed and her motion for summary judgment should be granted.

III. MS. F HAS NEVER FAILED TO REPORT THOSE LIVING WITH HER ON HER ANNUAL RECERTIFICATION FORMS.

As one of its grounds for eviction, Petitioner alleges that Mr. E resided with Ms. F as a family or household member or guest, and that she "willfully" failed to include Mr. E in her family composition on her most recent recertification as required by Department of Housing and Urban Development ("HUD") rules. Upon information and belief, Petitioner's sole basis for this allegation is a statement made by Mr. E, Ms. F's abuser, when he was arrested after banging on Ms. F's door at 4 a.m. seeking entrance to her apartment and subsequently attacking a security guard.

Ms. F denies that Mr. E has ever lived in her apartment and therefore she has not violated HUD rules by failing to place Mr. E on her family composition. *See F Aff.* ¶26. In fact, Mr. E had his own apartment at the subject premises until February 2003 when he was evicted. *Id.* at ¶14. Upon information and belief, Mr. E lives with his aunt at _____. *See Lease*, attached hereto as Exhibit C.

Ms. F has lived and continues to live only with her three children, _____. F Aff. ¶2.
She has never failed to report those living in her apartment on her recertification forms,
and accordingly that portion of the Petition must be dismissed and her motion for
summary judgment granted.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court dismiss
the Petition and grant her Motion for Summary Judgment in its entirety.

Date: January 8, 2007
Brooklyn, NY

Respectfully submitted,

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