

ERASE



RACISM

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TO RACIAL EQUITY

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## ERASE Racism Files Federal Lawsuit

On April 30, 2015, ERASE Racism, along with the Fair Housing Justice Center (FHJC) and seven African American testers, filed a lawsuit in federal district court (S.D.N.Y.) alleging that the owner, management company and superintendent of an apartment complex in the Town of Smithtown are discriminating against African American renters. The lawsuit names Empire Management America Corp. and Square Realty Group LLC, both based in Manhattan, and the complex superintendent as defendants. The plaintiffs, including ERASE Racism, are represented by Diane Houk, Esq. and Theodor Oxholm, Esq. of Emery Celli Brinckerhoff & Abady LLP. The lawsuit seeks injunctive relief to stop the discrimination and ensure future compliance with fair housing laws. It also seeks damages and attorneys' fees.

A jointly funded and sponsored investigation by ERASE Racism and FHJC in 2014 comprised, in part, of sending several teams of comparably qualified African American and white testers posing as prospective renters to inquire about apartments at the Mayfair Garden Apartments. The complaint alleges that the complex superintendent discouraged African Americans from renting apartments by misrepresenting the availability of apartments, not showing available apartments, and misrepresenting the dates apartments were available to rent. The lawsuit alleges that the defendants' conduct constitutes racial discrimination in violation of the federal Fair Housing Act, which states that it is illegal to "discriminate against any person in terms, conditions, or privileges of sale or rental of a dwelling, ... because of race, color, religion, sex, familial status, or national origin." The lawsuit also alleges racial discrimination in violation of the Suffolk County Human Rights Law.

Mayfair Garden Apartments, a 107-unit complex, is located at 51 Mayfair Gardens, in Commack in the Town of Smithtown, a predominantly white community in Suffolk County. The complex is located across the street from Mayfair Shopping Center, a large retail center that includes a supermarket, and is situated near a stretch of Jericho Turnpike with many retail and dining establishments with employment opportunities. Public schools and other educational centers are close by, and Mayfair Garden enjoys easy freeway access to other Suffolk County locations.

This lawsuit is an example of African Americans being denied housing of their choice in high-opportunity communities of their choice with access to low-need, high-resource schools. Where a child grows up and goes to school has a significant impact on long-term outcomes for that child, according to *The Effects of Exposure to Better Neighborhoods on Children: New Evidence from the Moving to Opportunity Experiment*, a May 2015 Equality of Opportunity Project study by Harvard University. Further, the integration of disadvantaged families into mixed-income communities is likely to reduce the persistence of poverty across generations.

ERASE Racism's January 2015 report *Heading in the Wrong Direction: Growing School Segregation on Long Island* found that residential segregation is driven by race, and not by income. African American children have generally been shut out of low-need schools because the schools mirror the housing segregation.

## Fair Housing Act in the Hands of the Supreme Court



The fight against discriminatory housing practices is at a pivotal point as the Supreme Court considers the case of *Texas Department of Housing and Community Affairs v. The Inclusive Communities Project, Inc.* In July, the Court is expected to issue a decision, which could resolve the question of whether “disparate-impact” – the claim that a policy has a discriminatory effect on a population, even if unintended – is an available claim under the Fair Housing Act (FHA). This is an historic decision in which ERASE Racism is deeply invested, because the outcome, either way, will have a ripple effect in communities across the country.

The 1968 FHA makes it illegal to “make unavailable or deny a dwelling to any person because of race, color, religion, sex, familial status, or national origin.” Federal courts have uniformly interpreted disparate-impact claims to be an implied right under the FHA. The Court may decide whether to invalidate the long-held and well-established interpretation of the FHA, which has protected millions of people from discriminatory housing practices.

The Inclusive Communities Project (ICP) is a non-profit organization that promotes racial and socioeconomic integration in the greater Dallas area. In 2008, ICP filed a lawsuit against the Texas Department of Housing and Community Affairs alleging that it disproportionately allocated federal tax credits to landlords of low-income housing in minority areas of the city, while denying credits in white areas of Dallas, thus perpetuating segregation. ICP argued that racially segregating the community in this way not only limited housing options for minorities, but also subjected them to inferior school systems. The lower federal courts agreed with ICP, holding that the Texas agency’s actions violated provisions of the FHA because the agency’s allocation of tax credits had a disparate impact on minorities.

Over 70 groups have joined the 22 amicus briefs voicing support for ICP’s position and urging the Supreme Court to acknowledge that disparate impact claims are a critical and fundamental right under the FHA. The supporting groups include current and former Congress members, law school affiliated groups, and civil rights organizations. Twenty-two U.S. cities and counties, and former Department of Housing and Urban Development (HUD) officials filed amicus briefs arguing in favor of disparate-impact claims. In addition, bipartisan contingents of 17 current State Attorneys General and of former Department of Justice officials each filed amicus briefs in support of allowing disparate-impact claims.

Residents of Long Island should pay close attention to how the Supreme Court decides this matter, as Long Island is not a stranger to housing policies that negatively affect minorities. Currently, there is a case before the federal court for the Eastern District of New York that involves a disparate-impact claim brought by the federal government against the Town of Oyster Bay. The government alleges that the implementation of Oyster Bay’s Next Generation and Golden Age programs, which give housing priority to current Oyster Bay residents, denies minorities housing in the predominantly white community of Oyster Bay. The Supreme Court’s decision may impact the Oyster Bay case as it continues in federal court.

## Source of Income Protection Takes Effect in Suffolk County

The amended Suffolk County Human Rights Law, which includes protections against housing discrimination based upon lawful source of income, took effect on January 21, 2015. A coalition of community organizations, which ERASE Racism helped to organize, was consulted by County Executive Steve Bellone, as he considered amending the human rights law. With resolute support from the Housing for All Coalition, the Suffolk County Legislature unanimously passed the amendment on September 10, 2014. The amendment serves as statutory protection for recipients of the Housing Choice Voucher Program, also known as Section 8, in securing safe and affordable housing. Under the newly enacted law, landlords and real estate professionals generally cannot legally reject potential tenants based on the fact that they would be using a Section 8 voucher, for example, to pay a portion of the rent. With ERASE Racism’s leadership and cooperation from then, County Executive Tom Souzzi, the Nassau County legislature passed a similar fair housing law amendment including source of income protection, which took effect in 2007.

## ERASE Racism Tracks New York State Post-Sandy Recovery



ERASE Racism continues its campaign to ensure that federal disaster relief funds from Superstorm Sandy are properly allocated to meet the needs of at-risk populations in need of special attention, as designated by HUD for storm relief efforts. These at-risk populations include victims of the storm who were low- and moderate-income (LMI) residents and African American and Hispanic residents. On February 5, 2015, ERASE Racism submitted formal comments on Amendment 8 of the New York State Community Development Block Grant Disaster Recovery (CDBG-DR) Action Plan to the Governor's Office of Storm Recovery (GOSR), which administers the federal CDBG-DR program on behalf of New York State. These comments were submitted, in part, because the GOSR has not yet provided the data sought by ERASE Racism in a December 9, 2014 FOIL request, which would allow us to evaluate the extent to which the GOSR has fulfilled its obligations to

meet the needs of the HUD-designated at-risk populations. Amendment 8 identifies how the State plans to allocate the third and final tranche of CDBG-DR funds, nearly \$421 million.

The State's Amendment 8 does not designate funding for housing and economic development projects. The Community Reconstruction Program, Infrastructure and Match initiatives, and Rebuild by Design are the only programs slated for funding. The plan for this final award of funds does not reflect or respond to the vital unmet housing needs of some affected New Yorkers, especially the vulnerable LMI residents.

In the interest of equity, ERASE Racism highlighted several areas of the State's planned allocation of federal funds that may not affirmatively further fair housing (AFFH) as required by federal regulations and as reiterated in relevant HUD Notices, including Federal Register Notice FR-5696-N-11, which was published October 24, 2014. One significant concern of Amendment 8 is that the State fails to designate any additional monetary resources to the NY Rising Housing Program from this tranche of CDBG-DR funds, despite an increased need for affordable housing options in the wake of Sandy. More than two years after Sandy, there is housing that remains uninhabitable and NY Rising participants are still awaiting payment from the GOSR to account for their losses. The State's finding, as articulated in Amendment 8, that there are \$2.02 billion in remaining unmet needs for homeowners and renters suggests that additional funding from this tranche of federal CDBG-DR funds for the NY Rising Housing Programs is necessary.

ERASE Racism raised concerns that the NY Rising Rental Buildings Recovery Program, which was not even rolled out until April 2014 and is geared toward multi-family rental property owners, does not sufficiently serve the needs of renters. The program, rather than allowing renters to directly participate, forces renters to go to their landlords, who then can choose whether to participate in the program. This leaves renters subject to their landlords' initiative to seek storm relief, and the percentage of eligible landlords who have participated in the program to date is unclear. While thousands of homeowners are being assisted by the State's housing programs, according to Amendment 8, only 19 rental property owners have received funds from the State's rental housing program.

ERASE Racism acknowledges that late in 2014 a unified funding request for proposals was issued by NYS Homes and Community Renewal, which included funding of up to \$40 million through the Housing Trust Fund, CDBG-DR funding of up to \$50 million under the NY Rising Rental Buildings Program Multi-family/Affordable Housing Fund, and funding of up to \$32 million through the Mitchell-Lama program. The CDBG-DR funding under NY Rising was geared toward developers and designated for new construction and rehabilitation of site-specific affordable, multi-family rental housing. Disappointingly, to date, there appears to be no public notice of funds awarded for Long Island projects under this RFP.

Further questions regarding the effectiveness of the NY Rising Rental Buildings Recovery Program were raised by the State's failure to provide updated statistics in Amendment 8 on how many rental properties were damaged by the storms within its jurisdiction. This information will help determine whether the rental program applicant pool is proportionate to the actual loss and whether the State should engage in more intense and targeted outreach for the NY Rising Rental Buildings Recovery Program as it continues to unfold.

## Staff Attorney: Andrew Koldin



Andrew Koldin, an attorney and member of the New York State Bar from upstate New York, has relocated to Long Island to join ERASE Racism as staff attorney, after practicing law in Syracuse and Washington, D.C. Following three years as a social studies teacher and three years as an attorney in private practice, Mr. Koldin decided to pursue a career as a civil rights attorney.

As an educator in Baltimore, Mr. Koldin gained a first-hand view of civil rights issues as they relate to education. Teaching at a middle school in which 97% of students were African-American and 97% of students received free or reduced-price meals, he taught classes of 40 students with textbooks that had outlived their useful shelf lives, and with special needs students who did not always receive prescribed individual services or evaluations. Witnessing the educational challenges that his students faced when compared to white students in more affluent areas had a profound impact on how Mr. Koldin viewed justice and equal opportunity.

As a private practice attorney, Mr. Koldin gained broad legal experience in many practice areas and he brings relevant skills and knowledge to ERASE Racism. His litigation experience taught him how to advocate zealously on behalf of his clients at the negotiating table and in court. He engaged in discovery, motion practice and oral advocacy in court, and thoroughly researched and analyzed a range of legal issues concerning federal and state statutes and regulations. He also became experienced in filing and appealing record requests pursuant to FOIL and FOIA.

Mr. Koldin has successfully represented individuals, small business owners, and corporate clients in cases concerning New York Labor Law, General Obligations Law, other legal areas, and in administrative matters before both state and federal agencies. In addition, he has researched and analyzed environmental legal issues, particularly those related to the Clean Air Act and CERCLA. In addition to his litigation, Mr. Koldin furnished compliance counseling and legal advice to clients seeking to find solutions outside of litigation. He counseled municipal and corporate clients on zoning and land use matters. Mr. Koldin has also skillfully crafted grant proposals, which were awarded over \$1,000,000. This experience allowed him to work with many stakeholders at the local and state levels to effectuate changes touching entire communities.

Outside of legal practice, Mr. Koldin has been an engaged citizen, serving on a community-based board of directors and various committees.

Mr. Koldin graduated *cum laude* from Michigan State University College of Law. He earned a Master of Science in teaching from LeMoyne College and a Bachelor of Arts in history from SUNY Geneseo. He is admitted to practice law in New York and the District of Columbia, and to plead cases before the United States District Court for the Northern District of New York.

## ERASE Racism Files Federal Lawsuit ...continued from page 1

The Commack public school district in which Mayfair Garden Apartments is located is a low-needs school district, according to the New York State Department of Education, with a high school graduation rate of 97%. Of its 2014 graduates, 96% planned on attending college. Research indicates that African Americans do not live in segregated communities by choice. In 2012, ERASE Racism published *Housing and Neighborhood Preferences of African Americans on Long Island*, a report based on survey research conducted by the Stony Brook University Center for Survey Research. The research found, among other things, that African Americans prefer racially integrated communities, report pervasive housing discrimination, and live in segregated communities regardless of their income. According to the 2010 Census, there were no African American renters on the site where the complex is located. Less than 1% of Commack's population is African American and only 1.1% of the population in the Town of Smithtown, where Commack is located, is African American.

This lawsuit may give African Americans access to a high-opportunity area, which, statistically speaking, has an absence of African Americans. When barriers to housing are placed in front of African Americans on the basis of race, we are denying opportunities not only for people today but for future generations as well.

## **ERASE Racism Tracks New York State Post-Sandy Recovery**

*...continued from page 3*

ERASE Racism stated that Amendment 8 provided insufficient details on which LMI communities will be the focus of the \$185 million RBD program. To date, the State has not publicly disclosed those LMI communities. In addition, our comments emphasized that while Amendment 8 discusses flood risk, climate change, and environmental issues, such discussion did not address the effects of such factors on LMI communities. LMI concerns, including suitable affordable housing built to conform to increased risk of flooding within green standards, should be a priority within the State's CDBG-DR allocation for community development. Minority LMI communities are in need of retrofitting and infrastructure reinforcement to recover from the storms and withstand future weather threats.

Unfortunately, the State's response failed to adequately address the concerns that ERASE Racism raised and instead provided a cookie-cutter reply to our comments. Glossing over ERASE Racism's points, the State's response is littered with mentions of community outreach, environmental concerns, and cooperation with local municipal agencies, without providing any substance.

ERASE Racism remains vigilant in tracking how disaster recovery funds are used on Long Island. ERASE Racism's comments, one of only two sets of organizational comments addressed by the State, send a message to the State that we will continue to check its planned actions and continue to bring community visibility to housing issues affecting vulnerable populations.

## **ERASE Racism Celebrates Peter B. Edelman, 1199SEIU UHE, and Teamsters Local 237**

Come help us celebrate another year of accomplishments by ERASE Racism and recognize the great work of other civil rights advocates. Every year ERASE Racism gives The Abraham Krasnoff Courage and Commitment Award to an individual or organization that has demonstrated a deep commitment to racial equity. We are proud to announce that this year's award will be given to nationally renowned attorney, visionary public policy expert, and esteemed law professor and scholar, Peter B. Edelman. Mr. Edelman will be honored at our 2015 Annual Benefit, which will take place on June 3<sup>rd</sup> from 5:30-8:30 p.m. at the Garden City Hotel, for his lifetime commitment to creating racial justice and ending poverty in the United States.

For more than five decades, Mr. Edelman has been a singularly courageous and consistent voice for the voiceless in all that he has done. He has served in all three branches of the federal government. He is the Carmack Waterhouse Professor of Law and Public Policy at Georgetown University Law Center, where he teaches constitutional law and poverty law and is the faculty director of the Georgetown Center on Poverty and Inequality.

At the Gala, ERASE Racism will also present its first Labor Leadership Awards to 1199SEIU UHE, President George Gresham, and to Teamsters Local 237, President Gregory Floyd. Commenting on this recognition, Ms. Gross said, "In an era of increasing anti-union activity across the country, ERASE Racism takes special pride and pleasure in giving its first Labor Leadership Awards to two unions that are known for their long and active commitment to civil rights and racial and economic equity on the local, state and national levels."

We hope you will join us on June 3<sup>rd</sup> for good food, lively music, and great conversation!

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*June 3rd Annual Benefit Reception*

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Moving Forward Together

Join us to celebrate the 2015 Benefit Honoree, Peter B. Edelman, and Labor Leadership Awardees SEIU1199 UHE & Teamsters Local 237! Tickets are still available.

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