SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **07**

Justice

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INDEX NO. 450373/2023

MOTION SEQ. NO. 002

SAFE HORIZON, INC., BVRULZIN BLEU, CARDY BULLY, LAUREN MILLER, AUSTIN MOORE, ARKIRA PITTMAN, and CHRISTOPHER PORTALATIN-TRINIDAD,

Plaintiffs,

- v -

DECISION + ORDER ON MOTION

ALEKSANDER KALAJ, 3823 CARPENTER AVE LLC, and LISA BOVA-HIATT,

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 50, 51, 52, 53, 54, 55, 56, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78

were read on this motion for EXPEDITED DISCOVERY.

The Legal Aid Society, New York, NY (Stephanie R. Rudolph of counsel), for plaintiffs.
Law Offices of Karen Takach, Bronx, NY (Karen Takach of counsel), for defendants.

Gerald Lebovits, J.:

This is an action alleging income/employment-based housing discrimination against the individual plaintiffs, each of whom holds a voucher to subsidize the cost of housing. Plaintiff has moved by order to show cause for a preliminary injunction, which is currently returnable on March 13, 2023. (*See* NYSCEF Nos. 33 [OSC on mot seq 001], 56 [OSC on mot seq 002, adjourning return date].) This court granted a temporary restraining order barring defendants from renting out units at the apartment building at issue pending this court's consideration of the motion. (NYSCEF No. 33 at 2.) The TRO remains in place.

On this motion, plaintiff seeks expedited discovery in advance of this court's consideration of the request for a preliminary injunction. This discovery takes the form of a set of interrogatories and a set of document demands. (NYSCEF Nos. 52 [document demands], 53 [interrogatories].) During the pendency of the motion, defendants responded to plaintiff's discovery requests, objecting in part and providing answers and documents in part. (*See* NYSCEF Nos. 68 [document responses], 69-77 [documents], 78 [interrogatory responses].)

On reviewing defendants' responses, in the context of the parties' motion papers submitted already on motion sequences 001 and 002, this court concludes as follows.

Document Demands:

1(a): This response is sufficient and need not be supplemented.

1(b): On this record, this court is not persuaded that defendants and/or their real-estate agent, nonparty Joseph Armato, lack any written information of any sort reflecting when the applicants referenced in this demand were accepted as tenants for the building at issue—whether that acceptance followed a telephone call from defendant Aleksander Kalaj to Armato, or otherwise. Defendants shall produce documents responsive to this demand, or, if no documents are available, shall provide detailed affidavits of diligent search executed by a defendant *and* by Armato, describing the searches that were conducted for these documents and indicating whether such documents ever existed (and if so, what happened to them).

1(c): Defendants shall clarify whether their response to this demand is that (i) no documents are available because none of these tenants has ever undergone a tenant screening, credit, or background check of any kind conducted by defendants or their agents; (ii) these tenants *did* undergo a tenant screening, credit, or background check of some kind, but no documents evidencing those checks are available; or (iii) some other answer. If the response is (iii), defendants shall specify what that answer is.

(2) and (3): These responses are sufficient and need not be supplemented.

(4): This court agrees that this document demand exceeds the scope of discovery relevant to plaintiffs' preliminary injunction motion. Defendants therefore need not respond further at this time to this demand.

(5) This response is sufficient and need not be supplemented.

Interrogatories:

1(a) through 1(f): Defendants shall supplement their responses to specify, for each applicant covered by this interrogatory, whether defendants gave any consideration to that applicant's application; and, if so, the stage in the application process at which defendants decided against moving forward any further with the application.

1(p): This court does not agree with defendants that this interrogatory references a disputed claim or calls for a legal conclusion. Also, defendants contend that they lack sufficient information to respond to this interrogatory in part because it seeks information about applicants referenced in a redacted email. (*See* NYSCEF No. 78 at 1.) But the email was sent by defendants' own real-estate agent, Armato. This court is not persuaded that defendants lack the information needed to respond to this interrogatory. Defendants must supplement their response.

(2): With respect to the applicants referenced in (1)(a) through (1)(f) and (1)(p) to whom defendants gave any consideration to the applicants' applications, defendants shall supplement this response to specify the date(s) on which defendants decided against moving forward any further with those applications.

With respect to the applicants referenced in 1(g) through 1(o), defendants shall supplement this response to provide the requested dates to the extent those dates are available following a further diligent search for documents responsive to Document Demand 1(b), as discussed above in this court's discussion of that demand. If dates remain unavailable, defendants shall supplement this response to so state.

(3): This response is sufficient and need not be supplemented.

(4) and (5): This court agrees that these interrogatories exceed the scope of discovery relevant to plaintiffs' preliminary injunction motion. Defendants therefore need not respond further at this time to this demand.

(6): This response is sufficient and need not be supplemented.

With respect to the document requests that this court has determined must be supplemented, the court concludes that the appropriate course is to afford defendants an additional seven days, until 5pm on Thursday, March 16, 2023, to provide their supplemental responses and materials. The parties shall each then have one week, until 5:00 p.m. on Thursday March 23, 2023, to submit simultaneous supplemental briefing on plaintiffs' preliminary-injunction motion.

Following the submission of supplemental briefing, the court will determine expeditiously whether to hold oral argument on the preliminary-injunction motion or to decide the motion on the papers.

Accordingly, it is

ORDERED that plaintiffs' motion for expedited discovery is granted in part and denied in part to the extent set forth above; and it is further

ORDERED that the parties may submit supplemental briefing on motion sequence 001 as set forth above; and it is further

ORDERED that the temporary restraining order entered on motion sequence 001 is extended until March 24, 2023, or further written order of this court.

3/9/2023
DATE

HON. GERALD LEBOVITS
J.S.C.

CHECK ONE:		CASE DISPOSED			X	NON-FINAL DISPOSITION	
		GRANTED		DENIED	X	GRANTED IN PART	OTHER
APPLICATION:		SETTLE ORDER				SUBMIT ORDER	
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN				FIDUCIARY APPOINTMENT	REFERENCE