

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DANIEL J. ALTIERI,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	No. 03-2732
	:	
BETHLEHEM DEVELOPERS and	:	
ANN EPISCOPA,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JANUARY 14, 2005

Before this Court is the Motion for Summary Judgment filed by Defendants, Bethlehem Developers and Ann D. Episcopo (“Episcopo”), and the Responses by Plaintiff, Daniel J. Altieri (“Altieri”). Altieri, who claims that he is mentally disabled, brought this *pro se* lawsuit alleging an illegal eviction by Defendants from an apartment in the Fred B. Rooney Building (the “Rooney Building”). Altieri basis his action against the Defendants upon the premise that “[t]he eviction of a mental [sic] disabled person for no reason is clear discrimination.” (See Compl.). For the reasons that follow, Defendants’ Motion for Summary Judgment will be granted.

I. BACKGROUND¹

On December 9, 1991, Altieri entered into a written Lease Agreement for

¹ Altieri has not provided any factual background to this action. Consequently, I have deduced a background from other pleadings, affidavits and documents submitted by the parties.

Apartment 509 in the Rooney Building, 4 East Fourth Street, Bethlehem, Pennsylvania.² (Defs.’ Br. Supp. Mot. Summ. J., Exs. A, B). On September 1, 2002, Altieri executed an Addendum to the Lease Agreement, entitled “Addendum to Lease Drug Free Housing,” which states as follows:

TENANT understands that the following conduct shall be grounds for termination of TENANT’s tenancy: any criminal activity in or close to the apartment building by TENANT or household member, live-in aide or guest of TENANT that . . .

- a. threatens the health, safety or right to peaceful enjoyment of their units or other tenants
- b. threatens the health or safety of any onsite management staff of the building
- c. is drug-related.³

² The Rooney Building is a Section 8 project for the elderly by the United States Department of Housing and Urban Development (“HUD”). (Defs.’ Br. Supp. Mot. Summ. J., Ex. A). “The Section 8 Program is designed to provide ‘decent, safe, and sanitary dwellings for families of lower income.’” Paige v. Phila. Hous. Auth., No. 99-497, 2002 WL 500677, at *1 (E.D. Pa. Mar. 28, 2002)(citing 42 U.S.C. § 1437). “HUD is the federal agency responsible for the administration and enforcement of various government programs designed to promote housing opportunities in the United States.” Darst-Webbe Tenant Ass’n Bd. v. St. Louis Hous. Auth., 339 F.3d 702, 705 (8th Cir. 2003). “HUD provides monetary assistance to local public housing agencies (‘PHAs’) . . . for the construction and operation of low-income housing.” Thomas v. Chicago Hous. Auth., 919 F. Supp. 1159, 1163 (N.D. Ill. 1996)(citing 42 U.S.C. §§ 1437b-1437i). “The PHAs may then charge below-market rent to eligible low income tenants.” Id. (citing 42 U.S.C. § 1437a). “In exchange for the subsidy, PHAs must comply with federal regulations promulgated by HUD under the United States Housing Act.” Id. (citing 42 U.S.C. § 1437 *et seq.*). “The PHA retains responsibility for managing, maintaining, and operating the housing project.” Id. (citing 42 U.S.C. § 1437)(“It is the policy of the United States . . . to vest in local public housing agencies . . . the maximum amount of responsibility in the administration of their housing programs.”).

³ The Housing Act, as amended, requires public housing authorities receiving funding through HUD to use leases “that ‘provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity on or off the premises, engaged in by a public housing tenant, any member of the tenant’s household, or any guest or other person under the tenant’s control, shall be cause for termination of tenancy.’” Guadarrama v. H.U.D., 74 F. Supp. 2d 127, 132-33 (D.P.R. 1999)

(Id., Ex. A). In the latter part of 2002 and the early part of 2003, the Rooney Building's property manager's office received numerous complaints from residents regarding suspected drug dealing and usage in the building. (Id., Exs. A, E). The complaints were relayed to, and investigated by, the City of Bethlehem Police Department. (Id., Exs. A, D, E). There were complaints regarding drug activity in Altieri's apartment. (Id., Ex. D). The police investigated and determined that Altieri was conducting drug deals from his apartment. (Id.). The police questioned Altieri. (Id.). Altieri admitted to using drugs in his apartment, but, at the time of questioning, Altieri stated that he did not have any drugs in the residence. (Id.). However, Altieri did present the police with a crack pipe.⁴ (Id.). The police secured the crack pipe and later submitted it to the Bethlehem Police evidence room. (Id.). Altieri was placed under arrest for the criminal possession of drug paraphernalia. (Id.). At the time of the arrest, Altieri spoke to the police about drug activity in the City of Bethlehem and agreed to cooperate with the police as an informant to avoid being

(quoting 42 U.S.C. § 1437d(1)(6)). HUD regulations administering Section 1437d(1)(6) require PHAs to impose the following lease obligation on tenants:

To assure that the tenant, any member of the household, a guest, or another person under the tenant's control, shall not engage in:

(A) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(B) Any drug-related criminal activity on or near the premises.

Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the unit.

24 C.F.R. 966.4(f)(12)(i).

⁴ Altieri produced an approximately six inch long metal pipe with burnt residue at both ends from an eye glass case that was located in a drawer in the living room end table. (Defs.' Br. Supp. Mot. Summ. J., Ex. D). The metal pipe was consistent with a pipe used to inhale crack cocaine. (Id.).

prosecuted for the charge on which he was arrested.⁵ (Id.). Pursuant to the agreement, Altieri became a police informant.

In the latter part of March 2003, Episcopo, the property manager of the Rooney Building, was informed by a member of the Bethlehem Police Department that Altieri had been arrested for and had admitted to drug-related activities in the Rooney Building. (Id., Ex. A). On April 8, 2003, pursuant to HUD requirements, Episcopo served Altieri with a Notice to Quit Premises stating, in part, as follows, “[t]he reason that your lease is being terminated and the landlord is repossessing the apartment is because you have engaged in criminal activity in or close to the apartment and the apartment building which is drug related.” (Id.). Subsequent to receiving the Notice, Altieri met with Episcopo and Dorothy Perschy, the Rooney Building’s office manager, in the manager’s office of the Rooney Building. (Id., Exs. A, E). At the meeting, Altieri admitted that he had engaged in drug use and drug dealing in the Rooney Building, apologized for his behavior and stated that he would vacate his apartment. (Id.). Subsequently, Altieri voluntarily vacated his apartment. (Id.).

In the Complaint, Altieri asserts that his eviction was caused by the Defendants’ discrimination against him based upon his mental disability. (See Compl.). Altieri claims that the discrimination was in violation of the 1990 Federal Disabilities Act.⁶ (Id.). He seeks actual

⁵ According to the Bethlehem Police Department Supplementary Report, as a result of the agreement between Altieri and the police, Altieri’s drug offense was “to be cleared by non-arrest.” (Defs.’ Br. Supp. Mot. Summ. J., Ex. D). The Report also stated that “[i]f Altieri does not cooperate . . . the criminal charge of possession of drug paraphernalia would be filed” (Id.).

⁶ The Complaint states that the Defendants violated the 1990 Federal Disability Discrimination Act. There is no act under this specific title. However, Altieri’s housing discrimination claim could potentially be brought pursuant to several acts, i.e. the Fair Housing

damages totaling \$700,000 and punitive damages amounting to \$900,000. (Id.). On November 3, 2004, the Defendants filed a Motion for Summary Judgment. Altieri has filed responses in opposition to the Motion.⁷

Amendments Act (“FHAA”), Civil Rights Act of 1968, § 804(f)(1, 2), as amended, 42 U.S.C.A. § 3604(f)(1, 2); Americans with Disabilities Act of 1990 (“ADA”), § 202, 42 U.S.C.A. § 12132; and Rehabilitation Act of 1973 (“RA”), § 504, 29 U.S.C.A. § 794. I find that the FHAA best addresses Altieri’s claim. In light of Altieri’s *pro se* status, I will examine Altieri’s claim pursuant to the FHAA. However, my analysis and conclusion pertaining to Altieri’s failure to raise any genuine issue of material fact regarding the issue of discrimination based upon his alleged disability can be applied with equal force to an examination of Altieri’s claim under either the ADA or the RA.

In Altieri’s Answer to the Defendants’ Request for Admission, Altieri states that his eviction was in violation of the Pennsylvania Human Relations Act (“PHRA”). (Def.’ Br. Supp. Mot. Summ. J., Ex. B); see also 43 PA. CONS. STAT. § 951, *et seq.* This mention of the PHRA is the first and only mention of the Act. Since no claim has been asserted, or established, under the PHRA, I will not consider Altieri’s PHRA claim. However, any claim under the PHRA would also be susceptible to my analysis and conclusion that Altieri has failed to raise any genuine issue of material fact regarding the issue of discrimination based upon his alleged disability. Moreover, there is a possible issue concerning exhaustion of administrative remedies under the PHRA. “Plaintiffs who fail to exhaust administrative remedies with the [Pennsylvania Human Relations Commission] are barred from judicial remedies under the PHRA.” Flush v. Mfg. Res. Ctr., 315 F. Supp. 2d 650, 657 (E.D. Pa. 2002).

⁷ In his response to the Defendants’ Motion for Summary Judgment, entitled “Reasons to Deny Defendants Summary Judgment,” Altieri requests an appointment of counsel. Altieri has made several previous requests for an appointment of counsel, all of which have been considered and denied. Likewise, I shall deny Altieri’s instant request for an appointment of counsel. For the same reasons as previously set forth in my August 24, 2004 Memorandum, I find that this case is not appropriate for the appointment of a voluntary attorney under the factors set forth in Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993). See Altieri v. Bethlehem Dev., No. 03-2732, 2004 WL 2106541 (E.D. Pa. Aug. 24, 2004). Thus, Altieri’s request for an appointment of counsel is denied.

In addition to filing his response to Defendants’ Motion for Summary Judgment, Altieri also filed a Motion to Dismiss Defendants’ Summary Motion and Rule Depositions of Police as Illegal and Moot. It appears that he filed the Motion to Dismiss Defendants’ Summary Motion also in response to Defendants’ Summary Judgment Motion. In light of Altieri’s *pro se* status, the Court will consider the arguments pertaining to summary judgment as an additional response to the Defendants’ Motion for Summary Judgment. As for the portion of the Motion pertaining to “Depositions of Police as Illegal and Moot,” it will be addressed later in this Memorandum Opinion. See n.11.

II. STANDARD

Pursuant to Federal Rule of Civil Procedure 56(c), summary judgment is proper “if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c). Essentially, the inquiry is “whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one-sided that one party must prevail as a matter of law.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 251-52 (1986). The moving party has the initial burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). An issue is genuine only if there is a sufficient evidentiary basis on which a reasonable jury could find for the non-moving party. Anderson, 477 U.S. at 249. A factual dispute is material only if it might affect the outcome of the suit under governing law. Id. at 248.

To defeat summary judgment, the non-moving party cannot rest on the pleadings, but rather that party must go beyond the pleadings and present “specific facts showing that there is a genuine issue for trial.” FED. R. CIV. P. 56(e). Similarly, the non-moving party cannot rely on unsupported assertions, conclusory allegations, or mere suspicions in attempting to survive a summary judgment motion. Williams v. Borough of W. Chester, 891 F.2d 458, 460 (3d Cir. 1989)(citing Celotex, 477 U.S. at 325 (1986)). Further, the non-moving party has the burden of producing evidence to establish *prima facie* each element of its claim. Celotex, 477 U.S. at 322-23. If the court, in viewing all reasonable inferences in favor of the non-moving party, determines that there is no genuine issue of material fact, then summary judgment is proper. Id. at 322; Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 (3d Cir. 1987).

“A *pro se* complaint must be held to less stringent standards than formal pleadings drafted by lawyers.” London v. Pa. Bd. of Prob. and Parole, 135 F. Supp. 2d 612, 614 n.5 (E.D. Pa. 2001)(citing Haines v. Kerner, 404 U.S. 519 (1972); Lewis v. Att’y Gen. of United States, 878 F.2d 714, 722 (3d Cir. 1989)). “A *pro se* [litigant’s] pleadings should be . . . construed liberally.” Lewis, 878 F.3d at 722. “A verified *pro se* complaint may be treated as an affidavit for purposes of determining defendants’ summary judgment motion.” London, 135 F. Supp. 2d at 614 n.5 (citation omitted); see also Simpson v. Horn, 25 F. Supp. 2d 563, 566 n.3 (E.D. Pa. 1998)(“In *pro se* cases, I generally treat verified pleadings as affidavits.”).⁸

III. DISCUSSION

“The [Fair Housing Act] was enacted to address the problem of discrimination by federally funded housing providers.” Am. Disabled for Attendant Progs. Today v. HUD, 170 F.3d 381, 387 (3d Cir. 1999). “Congress passed the Fair Housing Act in 1968 to prevent housing discrimination.” Id. at 383. “In 1988, it added the FHAA to include people with physical disabilities.” Id. The FHAA added disabled people to the classes of people protected “from both public and private housing discrimination, making it unlawful to ‘discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter’ on the basis of handicap.”⁹ Id. at 387 n.10 (citing 42 U.S.C. § 3604(f)(1)).

⁸ Although Altieri filed responses to the Defendants’ Motion, he did not include any affidavits or other competent evidence supporting his position, as required by Federal Rule of Civil Procedure 56(e). Since Altieri is proceeding *pro se* I will construe his pleadings liberally. Haines, 404 U.S. at 520. For purposes of determining Defendants’ Motion for Summary Judgment, I will consider the information set forth in Altieri’s Complaint and responses to be in the nature of an affidavit. London, 135 F. Supp. 2d at 614 n.5.

⁹ The FHAA defines handicap as: “(1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such

Unlawful discriminatory housing practices in violation of the FHAA may be brought under three distinct legal theories: “(1) intentional discrimination claims (also called disparate treatment claims); (2) disparate impact claims; and (3) claims that the [defendants] failed to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford [handicapped] person[s][an] equal opportunity to use and enjoy a dwelling.” Lapid-Laurel, L.L.C. v. Zoning Bd. of Adjustment of the Township of Scotch Plains, 284 F.3d 442, 448 n.3 (3d Cir. 2002)(citations omitted); see also ReMed Recovery Care Ctr. v. Township of Willistown, 36 F. Supp. 2d 676, 683 (E.D. Pa. 1999)(“There . . . are three distinct types of cases under the FHAA: intentional discrimination, discriminatory or disparate impact, and failure to make reasonable accommodations.”). In this case, Altieri has not set forth any factual allegations establishing, or claiming to bring, his claim under any of the three legal theories.

Under the FHAA, “[i]n order to prove intentional discrimination, plaintiffs must show that the decision to deny them housing opportunities was motivated, at least in part, by their disabilities.” Fowler v. Borough of Westville, 97 F. Supp. 2d 602, 612 (D.N.J. 2000). As for a disparate impact claim, a plaintiff is required to “to prove absent a discriminatory intent on the part of the defendant, the effects of defendant’s action were nonetheless discriminatory.” Marriott Senior Living Servs., Inc. v. Springfield Township., 78 F. Supp. 2d 376, 389 (E.D. Pa.

an impairment, or (3) being regarded as having such an impairment.” 42 U.S.C. § 3602(h). Altieri claims that he is mentally disabled, but does not offer any specific diagnosis or condition. Altieri also fails to offer any evidence establishing that he suffers from a handicap as defined by the FHAA. Defendants do not contest Altieri’s assertion that he is mentally disabled. For purposes of this Motion only, the Court will assume that Altieri is handicapped as defined by the FHAA.

1999)(citations omitted). Regarding a claim for failure to make reasonable accommodations, a plaintiff must show “a refusal to make reasonable accommodations in rules, policies, practices or services, when such accommodations may be necessary to afford [handicapped] person[s] equal opportunity to use and enjoy a dwelling.” 42 U.S.C. § 3604(f)(3)(B).

In the Complaint, Altieri’s only claim regarding discrimination based upon his alleged mental disability is the following sentence, “[t]he eviction of a mental [sic] disabled person for no reason is clear discrimination.” (See Compl.). In neither the Complaint nor any of his submissions in opposition to Defendants’ Motion for Summary Judgment does Altieri factually explain what discrimination he supposedly suffered at the hands of the Defendants. There are virtually no allegations, or evidence, factually supporting Altieri’s allegation that the Defendants’ decision to evict him was motivated by a desire to discriminate against him on the basis of his alleged mental disability. Neither are there any factual allegations, or evidence, showing that the effects of Defendants’ eviction were discriminatory even absent a discriminatory intent on their part. As for the issue of discrimination based upon a failure to reasonably accommodate, Altieri does not raise the issue of accommodation at all. Thus, Altieri does not allege, or establish, any claim under the FHA.

In his opposition to Defendants’ Motion for Summary Judgment, Altieri does not directly refute the Defendants’ arguments and evidence presented in support of summary judgment. Relying upon the Addendum to the Lease signed by Altieri which provides that drug-related criminal conduct is grounds for termination of his tenancy, the Defendants argue that Altieri’s eviction was properly based upon his engagement in drug-related activities. In support of their argument, the Defendants provide, in part, the following evidence: affidavits of Episcopo

and Perschy; Defendants' Request for Admissions and Altieri's Response; the HUD Handbook Section 4350.3 (Occupancy Requirements of Subsidized Multifamily Housing Programs); Bethlehem Police Department records regarding Altieri's Arrest Record, Complaint/Incident Report, Police Supplementary Report; and the deposition transcript of Bethlehem Police Sergeant, William Dosedlo. (See Defs.' Br. Supp. Mot. Summ. J., Exs. A-E). In their affidavits, both Episcopo and Perschy confirm that Altieri admitted to engaging in drug use and drug dealing in the Rooney Building and that he voluntarily vacated his apartment. (Id., Exs. A, E). Altieri does not contest either affidavit. Regarding Defendants' Request for Admissions and Altieri's Response thereto, Altieri admits that the Defendants' copy of the Addendum was a true and correct copy of a genuine document that he signed.¹⁰ (Id., Ex. B). Altieri does not deny the terms of the Addendum or that he was bound to such terms. As for the HUD Handbook Section 4350.3, it provides, in part, that "[o]wners may evict a family when they determine that a household member is illegally using a drug or when owners determine that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by others." (Id., Ex. C). Altieri neither contests, nor denies, the terms of this regulation. Regarding the evidence presented pertaining to the Bethlehem Police Department, it establishes that there

¹⁰ It is noted that in his Response to the Defendants' Request for Admissions, Altieri states, "[I] [n]ever used or even saw any drugs in 12 years of [my] tenancy there - except those mental needed drugs proscribed by [my] doctor - and [I] never [have] been charged or arrested or even accused of illegal drug use by police or others and by management - only by a false accusation on Apr. [1993] - by management for excuse to evict [me] from premises illegally. . . ." (Pl.'s Answer Req. for Admis., ¶ C). In later submissions to the Court, Altieri contradicts himself by stating, *inter alia*, "Plaintiff was duped into drug use due to his mental disability" and "Plaintiff should have been rewarded not evicted for his help to clean out drug dealers from building of Defendants - - there was drug activity before Plaintiff moved in the premises." (Pl.'s Reasons to Deny Defs.' Summ. J., ¶¶ 1, 5).

was drug-related activity in Altieri's apartment, as well as cooperation by Altieri with the police.

In response to Defendants' arguments and evidence, Altieri does not refute any of the Defendants' evidence.¹¹ Altieri admits to drug use and also admits to cooperating with the police. Thus, Altieri supports Defendants' asserted basis for his eviction; namely, that Altieri was involved in drug-related criminal activity. Most telling, however, is the fact that Altieri's responses to Defendants' Motion for Summary Judgment fail to refer, or even touch upon, the issue of discrimination.¹² Thus, not only does Altieri fail to offer argument showing discrimination, but he fails to proffer any evidence establishing discrimination based upon his alleged mental handicap. As a result, there are no facts in the record which suggest that the discriminatory actions of which Altieri claims ever occurred. Without presenting factual

¹¹ Altieri seeks to have the depositions of police deemed illegal and moot. (See Pl.'s Mot. Dismiss Defs.' Summ. Mot. and Rule Dep. of Police as Illegal and Moot). Altieri claims that he was not informed about the depositions taken on November 3, 2004 and, therefore, was not present. (Id. ¶ 3). I am unaware of what depositions were conducted on November 3, 2004. As previously mentioned, the Defendants have included William Dosedlo's deposition transcript as an exhibit to their Motion for Summary Judgment. (Defs.' Br. Supp. Mot. Summ. J., Ex. D). This was the only transcript of deposition testimony which was presented to this Court. Notably, William Dosedlo's deposition was conducted on August 31, 2004. Regarding William Dosedlo's deposition transcript, the Defendants attached a copy of a Notice of Taking Deposition addressed to Altieri which sets forth all of the pertinent information required to make adequate notice. (Id.). The Defendants also attached a copy of a Certificate of Service certifying that defense counsel served Altieri with the Notice of Taking Deposition on August 3, 2004, by depositing the Notice in the mail to Altieri's address with postage prepaid. (Id.). "For purposes of the Federal Rules of Civil Procedure, 'service by mail is complete upon mailing.'" United Lawn Mowers Sales & Serv., Inc. v. Hagel, No. 95-6157, 1997 WL 327564, at *3 (E.D. Pa. June 12, 1997)(quoting FED. R. CIV. P. 5(b)). It appears that service of the Notice of Taking Deposition was properly served upon Altieri. In light of the aforementioned, Altieri's Motion to Rule Depositions of Police as Illegal and Moot is denied.

¹² I also note that Altieri's Motion to Dismiss Defendants Summary Judgment and Rule Depositions of Police as Illegal and Moot fails to mention, or touch upon, the issue of discrimination. Instead, it primarily focuses upon the conduct of the Bethlehem Police Department, which is not a party to this action.

allegations and evidence regarding how the Defendants discriminated against Altieri through taking action they apparently were allowed to take under federal regulations, Altieri has failed to show the existence of any material issue of fact to establish that he was discriminated against based upon his alleged mental disability. After careful consideration of whether Altieri's *pro se* Complaint and documentation could support a finding in his favor, I conclude that even the most liberal reading would fail to disclose a genuine issue of material fact to a claim upon which relief could be granted. Consequently, summary judgment is granted in favor of the Defendants.

An appropriate Order follows.

