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Gimme Shelter: But Cash Only, Please

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A recent case addressed landlords' refusal to accept Section 8 vouchers. The issue before the Court in *People v. Commons W.*, 2023 N.Y. Slip Op. 23213, (N.Y. Sup. Ct. 2023) was whether New York's source of income antidiscrimination statute (Executive Law § 296(5)(a)(1)) violates the Fourth Amendment. Judge Mark Masler, writing for the Cortland County Supreme Court, held that New York's Executive Law § 296 violates the Fourth Amendment to the extent it restricts or prohibits a landlord's ability to refuse to rent or lease housing accommodations to persons using Section 8 vouchers for their source of income.

Section 296 of New York's Human Rights Law (Executive Law Article 15) states that it is an unlawful discriminatory action to "...refuse to sell, rent, lease or otherwise to deny...a housing accommodation because of...[one's] lawful source of income.[1]" Respondents in the case own and operate various rental properties in Ithaca, New York, but do not participate in the Section 8 program. The State filed suit against the respondents, asserting that because Section 8 vouchers constitute a lawful source of income, respondents' failure to accept such vouchers "...constitutes impermissible source of income discrimination in violation of the Human Rights Law.[2]" Among other relief, including restitution for those affected, the State sought a permanent injunction enjoining respondents from refusing to rent or lease to persons using Section 8 vouchers.

The respondents contended that, because the program is voluntary, the source of income antidiscrimination statute's requirement to accept the vouchers unconstitutionally compels respondents to participate in the Section 8 program. Under the Section 8 program, participating landlords must enter into a Housing Assistance Payment ("HAP") contract with a Public Housing Agency ("PHA"). The HAP contract requires that landlords consent to inspections of both the prescribed unit and the premises as determined by the PHA. It also requires access to all accounts or other records of the landlord relevant to the HAP contract. Respondents argued that forcing landlords to participate in the Section 8 programs violates the Fourth Amendment because it forces landlords to suffer warrantless searches of their rental property as well as their records.

The Court agreed, stating that landlords cannot accept a Section 8 voucher without participating in the Section 8 program. In requiring respondents to accept Section 8 vouchers, the Human Rights Law compels landlords to participate in the Section 8 program. Thus, respondents' property and records are subject to warrantless searches. Citing precedent, the Court maintained that a law cannot "coerce property owners into consenting to warrantless inspections in derogation of their constitutional rights by conditioning their ability to rent real property on providing such consent" [3]. Here, because the Human Rights Law requires landlords to accept Section 8 vouchers, the law unconstitutionally requires landlords to waive their Fourth Amendment rights. Therefore, the Court dismissed the State's petition with prejudice.

[1] N.Y. Exec. Law § 296(5)(a)(1).

[2] *People v. Commons W.*, 2023 N.Y. Slip Op. 23213, (N.Y. Sup. Ct. 2023).

[3] *Id*. citing *Sokolov v Village of Freeport*, 52 N.Y.2d at 345-347 (N.Y. 1981).