

Limited English Proficiency as a Protected Class Under the FHA and NYSHRL

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Background

One of the most famous monikers bestowed upon the United States over the years is *the melting pot*.¹ It's a beautiful analogy: the idea that many different people of varying races, national origins, and creeds mix together to make something wholly new.² Arguably, it is New York City which, for a long time, exemplified this ideal. As many immigrants' first stop in the Americas, historically New York City acted as a nexus point for cultural and social exchange.³ If the people are the ingredients, New York City is the pot. While it can certainly still hold claim to that moniker (Queens, New York is the most diverse place on the planet⁴), there are some who have no desire to melt along with all the other fantastic cultures and ideas that they live alongside. When those first immigrants came to America in the early 20th century, housing in New York City was not that hard to find.⁵ The City was still young and expanding. However, as property value has continued to skyrocket, it has become more and more difficult for immigrants to find housing.⁶ On top of that, a growing resistance to immigration led to many landlords outright refusing to rent to immigrants or those who weren't classically "American."⁷ The Fair Housing Act of 1964 ("FHA")⁸ and the New York State Human Rights Law ("NYSHRL")⁹ tackled this issue head on. The FHA made it unlawful to "discriminate against any person in the terms, conditions, privileges of sale or rental of a dwelling because of race ... or national origin."¹⁰ And

the NYSHRL uses almost identical language to ensure the same protections for people at the state level. [11](#)

Limited English, No Lease?

The above laws clarify that landlords who refuse to rent to someone based on their national origin or race are in violation of relevant substantive law. But a recent Northern District case, *CNY Fair Hous., Inc. v. Swiss Vill, LLC* brings a new challenge. The question presented in that case was whether a landlord could refuse to rent based on someone's English language proficiency. [13](#) In 2019, "a client of a nonparty organization named Rescue Mission Alliance ("RMA"), called Swiss Village Apartments to inquire about available apartments." [14](#) The client was a native Spanish speaker with limited English proficiency ("LEP"), so an RMA case worker took over the call. The case worker quickly discovered that Swiss Village had no intention of renting to someone who did not speak fluent English unless they were going to live with someone who did. [15](#)

After this conversation RMA decided to conduct "audit testing." [16](#) In essence, they would call in and attempt to find housing for people who had LEP. [17](#) RMA made the calls to Swiss Village; they believe that all were answered by defendant Jill Butler. [18](#) During each call, Butler repeated their stance that they would not rent to someone with LEP. Butler stated that, "the lease was a '16-page legal document ... that [the client] would have to sign' and told the caseworker that Butler 'would have to know that [the client] knows how to read that.'" [19](#)

CNY Fair Housing (a non-profit dedicated to ensuring fair housing in New York) filed suit, alleging that defendant's refusal to rent based on LEP violated both the FHA and the NYSHRL. [20](#) Defendants moved for summary judgment on the grounds that, "(1) prospective tenant's language or LEP status is not a protected class under the FHA or NYSHRL, and (2) the complaint fails to otherwise identify the prospective tenants' race or national origins." [21](#)

In considering the summary judgment motion, the Court first dealt with the issue whether people with LEP constitute a protected class in New York. ²² The Court deferred to the Housing and Urban Development (“HUD”) guidelines providing that the FHA could be violated by “[s]elective application of a language-related policy, or use of LEP as a pretext for unequal treatment of individuals based on race, national origin, or other protected characteristics.” ²³ While the Second Circuit has not addressed the issue of people with LEP as a protected class, it has already determined that HUD guidance warrants deference from the court. ²⁴ The Court here concluded that, because the HUD guidance was well-reasoned and well-researched, as well as precedent already established of deferring to HUD guidelines, LEP’s were a protected class under the FHA. ²⁵

Defendant’s remaining argument was that “[p]laintiff’s claims should still be dismissed because the Complaint fails to identify the national origin or race of the prospective tenants, or that Defendants were aware of their national origin or race.” ²⁶ However, the Court pointed out that neither of the above are requirements for a prima facie case of discrimination under the FHA. Were this case to go to trial, they may have an argument but, as this was at the summary judgment stage, the court dismissed these arguments as well.

Takeaways

While this is only a denial of summary judgment, it is likely that a trial court will make the same determination. The HUD guidelines have been deferred to by the Second Circuit before and a trial court will most likely do the same. Under those guidelines, people with LEP are a protected class in New York.

If we were to change the facts, for example, if Defendants were refusing to rent to anyone from Central or South America, this would be a clear violation of the FHA. Because Defendants explicitly stated they do not rent to people with LEP, they have essentially done the same thing, as both are protected classes under the FHA.

This case is a resounding win for the melting pot. Different languages blending together is one of the many practices that enriches the United States and allows us claim that melting pot moniker. Ensuring that people with LEP are able to find housing is also beneficial for the city, and this case enshrining that protection in the FHA is beneficial for the law.

- 1 The Editors of Encyclopaedia Britannica, *Americanization*, Encyclopaedia Britannica, <https://www.britannica.com/topic/Americanization>.
- 2 See *id.*
- 3 See *id.*
- 4 Selim Algar, Queens is crowned nation's most diverse large county. <https://nypost.com/2019/07/04/queens-is-crowned-nations-most-diverse-large-county/>.
- 5 Plunz, Richard. *A History of Housing in New York City*, New York Chichester, West Sussex: Columbia University Press, 2016.
- 6 *Id.*
- 7 *Id.*
- 8 42 U.S.C. §§ 3601 et seq.
- 9 N.Y. Exec. Law § 297, et seq.
- 10 42 U.S.C. §§ 3601 et seq.
- 11 See N.Y. Exec. Law § 297, et seq.
- 12 *CNY Fair Hous., Inc. v. Swiss Vill., LLC*, No. 521CV1217MADML, 2022 WL 2643573 2 (N.D. 2022).
- 13 See *id.*

14 *CNY Fair Hous., Inc.*, 2022 WL 2643573 2 (N.D.N.Y. 2022).

15 *See id.*

16 *See id.*

17 *See id.*

18 *See id.*

19 *Id* at 4.

20 *See CNY Fair Hous., Inc. v. Swiss Vill., LLC*, No. 521CV1217MADML, 2022 WL 2643573 2 (N.D.N.Y. 2022).

21 *Id* at 8.

22 *See id.*

23 *Id* at 10; U.S. Dep't of Hous. & Urb. Dev., *Office of General Counsel Guidance on Fair Housing Act Protections for Persons with Limited English Proficiency* 1 (Sept. 15, 2016).

24 *CNY Fair Hous., Inc.*, 2022 WL 2643573 2 (N.D.N.Y. 2022).

25 *See CNY Fair Hous., Inc.*, 2022 WL 2643573 2 (N.D.N.Y. 2022).

26 *Id* at 12.

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