



Action. Access. Progress.

Final Report to The Barbara McDowell and Gerald S. Hartman Foundation July 2018

Thanks to support from the McDowell Foundation, we [filed and litigated a federal class action](#) lawsuit under the Fair Debt Collection Practices Act (FDCPA) on behalf of Philadelphia consumers who were sued for back rent and/or possession of their rental housing when Philadelphia law says that no money was owed. We litigated the case in partnership with pro bono counsel from Chimicles & Tikellis LLP and the National Consumer Law Center. The parties have reached a settlement in principle and counsel are now preparing the necessary documents for a fairness hearing and notice on the proposed agreement.

This suit was designed to give meaning to Philadelphia laws that have long been ignored by landlords and their attorneys. In particular, the suit highlights a requirement that landlords must provide tenants with a Certificate of Rental Suitability, which in turn may only be issued when a property has no violations of Philadelphia's housing code. If a landlord does not provide the Certificate, he is not entitled to rent, nor to possession of the property. In other words, the Certificate requirement forces landlords to bring their properties into compliance before they may collect rent or obtain possession of the property through an eviction process. Many landlord lawyers ignored these requirements. Even when their clients were unable to secure a Certificate or simply did not do so, many lawyers filed eviction complaints demanding money that low-income Philadelphians did not owe; and demanded possession of the properties. Those tenants, often low-income and without counsel, were generally not aware of this law as a defense to an eviction complaint or otherwise unable to raise it. We therefore set out to give meaning to Philadelphia's housing quality law, to increase the numbers of landlords that comply with housing quality law, and to decrease the frequency of poor Philadelphians being sued for money they did not owe.

To further that end, beginning in September 2017, we pursued this class action on behalf of named plaintiffs Cassandra Baker and Corrine Morris, two low-income, African-American mothers, and others similarly situated, against landlord lawyer Glenn M. Ross. We litigated the class action lawsuit in parallel with an individual FDCPA case using the same theory, filed in March of 2017. In this complementary lawsuit, we represent Gerrell Martin and Curtis Sampson, an African American mother and father of six children, including two young children with special needs. Ms. Martin and Mr. Sampson's home lacked heat, and at one point, was deemed unfit for human habitation. In addition to failing to provide Ms. Martin and Mr. Sampson with a Certificate of Rental Suitability, their landlord was also unlicensed, a second violation of Philadelphia law. In short, Ms. Martin and Mr. Sampson owed nothing as a matter of law. As with the Baker case, a collection attorney sued Ms. Martin and Mr. Sampson for the money anyway, and demanded they leave the property. And, as with the Baker case, this unlawful eviction complaint formed the basis for our lawsuit against another law firm for violating the FDCPA.

The class action case, the subject of this grant, moved relatively quickly toward settlement. As reported in our March 2018 report, the defendant law firm did not file a motion to dismiss;

instead, it answered the complaint in November 2017. In December, we [amended the complaint](#) to incorporate Corrine Morris as a second named plaintiff and in January 2018, we exchanged initial disclosures and the court held a Rule 16 status conference. The court thereafter issued a scheduling order for discovery, expert reports, and a class action certification motion. Shortly after the status conference, the defendants asked the court to refer the case to a magistrate judge for settlement discussions, explaining that its small insurance policy was being eroded by defense costs. In April, after working with a consulting expert to identify the scope of the potential class, and the class's potential damages, we participated in a court supervised settlement conference. In mid-July, after weeks of additional negotiations, the parties developed and signed a preliminary settlement agreement.

The proposed settlement includes the certification of a settlement class, along with payment of \$78,000 for distribution to the class, named plaintiffs, and for fees and costs. This amount was equal to the balance of the defendant law firm's insurance. The settlement also includes prospective injunctive relief, requiring defendants to "use reasonable practices to avoid commencing eviction actions demanding rent or eviction for periods of the landlord's noncompliance with the Certificate of Rental Suitability requirement," as outlined in Philadelphia law. Later this month we will file a motion for preliminary approval and to certify the settlement class, which includes approximately 300 individuals who rented from a landlord represented by attorney Glenn Ross and were sued for rent when none was due. Our remaining tasks are to file the motion for preliminary approval along with the proposed notice, handle objections and opt outs, and finally, submit a final motion for class certification to the court for hearing and approval. (While the class action will not result in a written opinion because of the settlement, the parallel federal FDCPA case is continuing toward trial, as the court has just denied our motion for summary judgment. It is very possible that case will eventually result in a written opinion, possibly by the Court of Appeals.)

The federal class action and the individual cases have already produced dramatic results far exceeding what we reasonably expected when we filed them, by alerting landlord tenant court leadership to these issues. In January 2018, as noted in our mid-year report, Municipal Court judges changed the Rules of Procedure to require landlords and their lawyers to prove on eviction complaints that they have complied with Philadelphia's Certificate of Rental Suitability law, lead law, and landlord licensing law. Our colleagues in landlord-tenant court have told us that the cases and the subsequent rule changes have changed the culture of compliance and that the rate of illegal evictions has dropped dramatically. This pair of cases, therefore, has already helped us secure our goal of improving landlord and landlord lawyer practices in court—not just against these defendants, but for all low-income tenants facing eviction and arguably, for the benefit of the entire city.

To date, we have spent \$8,173.46 of the \$25,000 grant from McDowell. We anticipate spending additional funds between now and September 30 as we move through the steps of securing court approval of the settlement and administer the settlement itself.

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