

Pa. Justices Nix Pittsburgh Law Protecting Section 8 Renters

By **Matthew Santoni**

Law360 (October 22, 2021, 4:29 PM EDT) -- A Pittsburgh ordinance that banned landlords from refusing to rent to tenants using federal housing vouchers was not authorized by the Pennsylvania Human Relations Act and was therefore an unconstitutional burden on business, the Supreme Court of Pennsylvania ruled.

The justices on Thursday pointed to another pair of city ordinances — one they had allowed and one they had struck down — as setting out the test for determining if a city law places an affirmative duty on businesses, and if it does, whether that burden was justified by some other law empowering the city.

Under that test, requiring landlords to take housing vouchers made them follow the requirements of the federal Section 8 program, but that was not explicitly authorized by the PHRA's general goals of reducing discrimination, the justices said.

"We can acknowledge, but still set aside, the aim of the PHRA to combat discrimination, including in housing. It is not the intent that concerns us, but what local action it expressly authorizes in service of that objective," wrote Justice David N. Wecht in the court's majority opinion.

Finding that the PHRA didn't specifically allow the city to bar landlords from refusing housing vouchers, the court struck down the law, which had been on hold pending the challenge that the Apartment Association of Metropolitan Pittsburgh filed in early 2016.

Wecht's opinion began by recapping a similar case that had set the bar: While a Pittsburgh ordinance requiring certain businesses to provide paid sick leave fell under the so-called "business exclusion" to Pennsylvania's Home Rule Charter system because it directed businesses to take action, the state's Disease Prevention and Control Law had granted Pittsburgh the authority to pass laws that could mitigate disease.

Giving sick workers paid time off to prevent them from infecting their colleagues **fell under that authority**, the court had ruled in July 2019, rejecting a challenge by the Pennsylvania Restaurant & Lodging Association.

But at the same time, the justices had struck down another city ordinance that had mandated minimum training and duties for building security guards, since it also put a burden on businesses but did not directly stem from the city's police powers.

The housing discrimination ordinance had been tossed by an Allegheny County court and the Commonwealth Court of Pennsylvania before the Supreme Court's paid sick leave decision, so the justices sent the case back to be reevaluated in light of their ruling in the PRLA case.

The lower courts again reviewed the ordinance and said it should be **thrown out**, which the Supreme Court affirmed Thursday.

Though the city's arguments had pointed to the PHRA's goals of **preventing discrimination** and argued that the law allows municipalities to pass regulations to meet those goals, the court said that authority didn't go so far as to let the city create a new protected class for users of housing vouchers, even if the city argued landlords could use rejecting Section 8 as a proxy for barring racial

minorities.

"Its allowance for local regulations in no way alludes to the expansion of classes of those against whom discrimination may be sanctioned," Justice Wecht wrote of the PHRA. "This cannot reasonably be read as an express authorization to conceive of a non-racial proxy for racial discrimination and thereby saddle businesses with affirmative burdens."

The justices said the PHRA did lay out things the city could do, such as creating its own human relations commission to address issues of discrimination, but by laying out specific options the state legislature was implying that the city couldn't go beyond them.

"Rather than support the city's argument, this enumeration undermines it," Justice Wecht wrote. "Where the General Assembly expressly grants clearly delineated authority, we presume that it does not intend to confer additional authority by implication."

In a concurring opinion, Justice Thomas G. Saylor said he thought the question was even less murky if the court read the Home Rule Charter's business exception more literally as barring any impositions on business that weren't "expressly" allowed by other laws.

"The city just received notice of this decision and will carefully review it with City Council and our law department," Dan Gilman, Pittsburgh Mayor Bill Peduto's chief of staff, told Law360 Friday. "It is imperative that we expand affordable housing access in Pittsburgh, including more opportunities to use housing vouchers."

An attorney for the Apartment Association told Law360 that the case was correctly decided and that the city had overreached by forcing landlords to take on the requirements of the Section 8 program.

"I would like to assure everyone that the members of the Apartment Association, from top to bottom, are opposed to discrimination," said William Stang of Fox Rothschild, representing the landlords. "They of course are opposed to the city of Pittsburgh being able to force them to comply with the intricate rules and regulations of the federal Section 8 program."

Pittsburgh is represented by Yvonne S. Hilton and Wendy Kobee of the city's law department, Mark L. Freed and Theresa M. Golding of Curtin & Heefner LLP, and Jeffrey J. Ruder of Ruder Law.

The Apartment Association is represented by William L. Stang of Fox Rothschild LLP.

The case is Apartment Association of Metropolitan Pittsburgh v. City of Pittsburgh, case number 26 WAP 2020, before the Supreme Court of Pennsylvania.

--Editing by Adam LoBelia.