

State of Minnesota
In Court of Appeals

Jimmie Edwards,

Appellant,

v.

Hopkins Plaza Limited Partnership and
Stuart Management Corporation,

Respondents.

RESPONDENTS' BRIEF

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LEGAL ISSUES

1. Did the district court err by granting Respondents summary judgment on Appellant's first public-assistance discrimination claim based on the court's conclusion that a property-owner's decision to discontinue participation in the federal Section 8 Tenant-Based Housing Assistance Choice Voucher Program does not, as a matter of law, violate the Minnesota Human Rights Act's prohibition on refusing to rent property because of an individual's status with regard to public assistance?

The district court concluded that because there is no statutory obligation under the Minnesota Human Rights Act that property owners participate in the Section 8 program, Respondents' business decision to non-renew a Housing Assistance Payment Contract with the Metropolitan Housing and Redevelopment Authority, and thereby not continue participation in the Section 8 program, was not an unfair discriminatory practice under the Minnesota Human Rights Act. In the absence of any evidence of discrimination, direct or otherwise, the district court granted Respondents' motion for summary judgment.

Apposite Cases:

Babcock v. BBY Chestnut Ltd. Partnership, No. CX-03-90, 2003 WL 21743771 (Minn. App. July 29, 2003)

Occhino v. Grover, 640 N.W.2d 357, 360 (Minn. App. 2002)

Apposite Statutes:

Minn. Stat. § 273.126

Minn. Stat. § 363A.03, subd. 47

Minn. Stat. § 363A.09, subd. 1

Minn. Stat. § 504B. 255

42 U.S.C. § 1437f(d)(1)(B)

24 C.F.R. § 982.53

2. Did the district court err by granting summary judgment to Respondents based on Appellant's second public-assistance discrimination claim based on the court's conclusion that Respondent's quote to Appellant of a rental rate of \$895.00 per month for an apartment, and subsequent rental of the same apartment for \$870.00 to an individual who was not participating in the Housing Assistance Choice Voucher Program, does not, as a matter of law, violate the Minnesota Human Rights Act's prohibition on refusing to rent property because of an individual's status with regard to public assistance?

The district court concluded that after Respondents elected not to continue their participation in the voluntary Section 8 Program, Appellant, who could only rent under the auspices of the Section 8 Program, was no longer qualified to lease an apartment from Respondents. The court concluded that Appellant was therefore unable to make a *prima facie* case of discrimination. The district court further concluded that the alleged rent differential did not constitute an adverse action capable of triggering the protections of the Minnesota Human Rights Act.

Apposite Cases:

Babcock v. BBY Chestnut Ltd. Partnership, No. CX-03-90, 2003 WL 21743771 (Minn. App. July 29, 2003)

Occhino v. Grover, 640 N.W.2d 357, 360 (Minn. App. 2002)

Apposite Statutes:

Minn. Stat. § 273.126

Minn. Stat. § 363A.03, subd. 47

Minn. Stat. § 363A.09, subd. 1

Minn. Stat. § 504B.255

42 U.S.C. § 1437f(d)(1)(B)

24 C.F.R. § 982.53

3. Did the district court err by granting summary judgment to Respondents on Appellant's disability-discrimination claim under the Minnesota Human Rights Act based on the court's conclusion that Appellant's request that Respondents accommodate his alleged disability-related diminished earning capacity by continuing their participation in the Section 8 program was not a reasonable request for accommodation under the Minnesota Human Rights Act?

The district court concluded that the Appellant's requested accommodation would fundamentally alter Respondents' policy not to participate in the Section 8 program. Hence, the requested accommodation was not reasonable. The district court observed that Appellant's requested accommodation would unreasonably force Respondents to assume the administrative, logistical, and financial burdens they sought to avoid by electing not to continue their participation in the voluntary Section 8 program in the first place.

Apposite Cases:

Babcock v. BBY Chestnut Ltd. Partnership, No. CX-03-90, 2003 WL 21743771 (Minn. App. July 29, 2003)

Huberty v. Washington County Housing & Redevelopment Authority, 374
F.Supp.2d 768, 773 (D. Minn. 2005)

Apposite Statutes:

Minn. Stat. § 273.126

Minn. Stat. § 363A.09, subd. 1

Minn. Stat. § 363A.10, subd. 1(2)

STATEMENT OF THE CASE

On August 28, 2008, Appellant filed a housing discrimination action against Respondents, the Hopkins Plaza Limited Partnership and Stuart Management Corporation, in the Hennepin County District Court. On about January 26, 2009, Appellant filed an amended complaint.¹ See App. 1; Exhibit A, First Amended Complaint. In his cause, Appellant alleged, among other things, (1) that Respondents' business decision to exercise an option to non-renew a HAP Contract and not continue participation in the voluntary, federal, Section 8 Program constitutes *per se* discrimination based on receipt of public assistance, in violation of Minn. Stat. § 363A.09, subd. 1(a); (2) that Respondents' quoted Appellant a rental amount that was higher than market value rent in violation of Minn. Stat. § 363A.09, subd. 1(b); and (3) that Respondents' business decision to non-renew a HAP Contract and not continue participation in the Section 8 Program constitutes a failure to make a reasonable accommodation with respect to Appellant's alleged "disabilities" in violation of Minn. Stat. § 363A.10, subd. 1(2).

On about March 17, 2009, Appellant and Respondents filed cross motions for summary judgment. On April 16, 2009, the district court held a hearing on the cross motions. On June 29, 2009, the district court signed an Order denying Appellant's motion and granting Respondent's motion for summary judgment, dismissing Appellant's claims

¹ Respondent cites to Exhibits A-Y that were filed as exhibits to Defendants' Motion for Summary Judgment in district court by referring to the appendix ("App."), with parallel citations to the exhibit letter and description.

in their entirety and *with prejudice*. Judgment was entered on July 7, 2009, pursuant to the district court's Order filed on June 30, 2009. Appellant timely commenced this appeal on September 2, 2009.

STATEMENT OF FACTS

A. Respondents Hopkins Plaza Limited Partnership and Stuart Management Corporation.

Respondent Hopkins Plaza Limited Partnership owns a multi-family housing complex known as Hopkins Plaza located in Hopkins, Minnesota. See App. 10; Exhibit B, Answer, ¶ 6; App. 15; Exhibit C, Defendants' Responses to Plaintiff's Requests for Admissions, Response No.: 1; App. 25; Exhibit D, Defendants' Answers to Interrogatories, Answer No.: 7. Hopkins Plaza is a conventionally financed, market rate, rental property, consisting of 51 one-bedroom apartments, 51 two-bedroom apartments and 42 three-bedroom town homes. *Id.* Respondent Stuart Management Corporation is the property manager and leasing agent for Hopkins Plaza. See App. 10; Exhibit B, Answer, ¶¶ 7- 8.

B. The Section 8 Program.

The Section 8 program is a federal, housing program established under the United States Housing Act of 1937, as amended by the Housing and Community Development Act of 1974. 42 U.S.C. §§ 1437 through 1440. The United States Department of Housing & Urban Development ("HUD") is the federal agency responsible for overseeing the Section 8 program. 42 U.S.C. § 1437f; see also 24 C.F.R. §§ 8.28 (a)(2), 982.1(a)-(b), 982.302(b). The Section 8 program is generally administered by state or

local governmental entities called the Public Housing Authority ("PHA"). 24 C.F.R. § 982.1(a).

The Section 8 program offers two types of assistance: (1) the tenant-based housing assistance choice voucher ("Section 8 program" or "HCV"); and (2) the project-based program. In project-based programs, rental assistance is paid for families or individuals who live in specific housing projects that are subsidized by HUD. See 42 U.S.C. § 1437f(6)-(7); see also 24 C.F.R. § 982.1(b). Section 8 program, HCV based programs provide a low-income family or individual with a HCV. See 42 U.S.C. § 1437f (o); see also 24 C.F.R. § 982.1 (a)-(b). When a Section 8 program tenant finds an apartment that meets HUD's program housing quality standards and rent guidelines, and the owner agrees to participate in the Section 8 program, the PHA will then contract with the owner to make monthly payments directly to the owner on behalf of the Section 8 program tenant beneficiary. See 24 C.F.R. §§ 982.1 (a)(2), 982.410(2), 982.507; see also App. 34; Exhibit E, Sample HAP contract forms. Thus, before a Section 8 tenant can move in and the PHA can make payments to an owner on behalf of a tenant - (a) the selected unit must be inspected and pass the HUD inspection; (b) a copy of the lease agreement between the owner and tenant must be given to the PHA; and (c) a HAP contract must be signed by the owner and PHA. The HAP contract runs concurrently with the lease agreement. See 24 C.F.R. §§ 982.302, 982.305, 982.308, and 982.309. Generally, a Section 8 program tenant will pay about 30% of his gross income toward the total rent amount and the federal government, through the PHA, will pay an amount that is equal to the remainder of the rent for the unit, pursuant to the HAP contract. See 42 U.S.C. § 1437f (o); see also

C.F.R. § 982.1 (a) and (b). Under federal law, participation in the Section 8 program by owners is voluntary; owners may lawfully refuse to accept applications from HCV tenant beneficiaries. See 42 U.S.C. § 1437f (o) (7); see also C.F.R. § 982.302 (b); *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 296 (2nd Cir. 1998).

C. “4d” Property Tax Incentive.

In 1997, the Minnesota legislature amended Minn. Stat. § 273.126, a property tax classification statute, to provide property owners with a tax incentive to make a minimum percentage of units in a rental complex available for Section 8 program tenants. Minn. Stat. § 273.126(3)(b). The property tax reform created a new class for lower income rental housing. The new class, commonly referred to as the “4d property tax classification,” significantly lowered property taxes for qualified rental properties. See App. 51; Exhibit G, 1998 Application Minnesota 4(d) Property Tax Classification.

D. Respondents’ Business Decision to *Opt In* the Section 8 Program.

After reviewing the rent roll, the market, the administrative requirements associated with participation in the Section 8 program together with the 4(d) program property tax incentive, in 1998 Respondents’ decided to participate in the Section 8 program. Respondents signed the necessary Housing Assistance Payment Contract (“HAP contracts”) with Metropolitan Housing and Redevelopment Authority (“Metro HRA”) – the PHA – and applied for the 4d property tax classification. See App. 77; Exhibit H, Lisa Moe Depo., p. 49, ll 4-18, p. 50, ll 1-25; App. 114; Exhibit I, HAP contract for Appellant’s unit.

E. The United States Congress Eliminates the “Endless Lease Rule”.

In 1998, the Congress permanently amended the Section 8 law, 42 U.S.C. § 1437f (d)(1)(B)(ii), inserting the clause “during the term of the lease” the owner shall not terminate the tenancy except for serious or repeated violation of terms and conditions of the lease or for violation of federal, state or other local law, or for other good cause. It is undisputed that by amending the Section 8 law and inserting the phrase “during the lease”, Congress eliminated the so-called “endless lease” rule. The “endless lease” rule had required property owners to renew leases for Section 8 program tenants and prevented owners from non renewing a lease, unless the owner instituted court proceedings (an eviction action) and established “good cause” within the meaning of Section 8 law – 42 U.S.C. § 1437f (d)(1)(B)(ii).

Under the federal Section 8 law, with the elimination of the “endless lease” when a tenant’s lease term expires, the owner and PHA may or may not sign a new HAP contract, and the owner and Section 8 tenant may or may not sign a new lease. Of course, an owner can also evict a Section 8 tenant during the lease for lease violations or other “good cause”. See App. 34; Exhibit E, Sample HAP Contract; App. 114; Exhibit I, HAP Contract for the Appellant’s unit.

F. The Section 8 Program Imposed Substantial Administrative Requirements on Respondents.

The HAP contract between Respondents and Metro HRA concerning the Appellant’s unit for the lease period of September 1, 2005 through August 31, 2006, is Exhibit I, see App. 114. The HAP contract imposed several restrictions on Respondents,

in order to receive the subsidy. For example, the HAP contract provided, among other things, that:

(1) The rent that the Respondents could charge was limited to the “reasonable” rent for the unit in question as determined by the Metro HRA in accordance with HUD requirements. See App. 114; Exhibit I, HAP contract, Part B, 6a;

(2) The Metro HRA determined whether the rent to Hopkins Plaza was reasonable in comparison to rent for other comparable unassisted units. See App. 114; Exhibit I, HAP contract, Part B, 6b;

(3) The Metro HRA re-determined the reasonable rent when required, in accordance with HUD requirements. See App. 114; Exhibit I, HAP contract, Part B, 6c;

(4) In addition to capping the rent at whatever the Metro HRA deemed reasonable, the HAP contract required that the rent for HCV beneficiary – Section 8 program “qualified” apartments met several requirements, i.e. the rent must be no more than what would be charged for comparable unassisted units. See App. 114; Exhibit I, HAP contract, Part B, 6d;

(5) If rent was higher than that of a comparable unit, then the HAP contract must state what factors make a unit with lower price comparable. The Respondents had to certify this vague requirement. See App. 114; Exhibit I, HAP contract, Part B, 8c;

(6) The Respondents were also required to provide to the Metro HRA any information requested by Metro HRA on rents charged by the Respondents for other units in the Hopkins Plaza complex or elsewhere. See App. 114; Exhibit I, HAP contract, Part B, 6d;

(7) Generally, the HAP contract obligated the Respondents to give Metro HRA and HUD any information pertinent to the HAP contract that Metro HRA or HUD required. See App. 114; Exhibit I, HAP contract, Part B, 11a;

(8) The Respondents were also obligated to provide full and free access and cooperation to Metro HRA, HUD or the Comptroller General of the United States in examining or auditing any and all of the owner's accounts and records. See App. 114; Exhibit I, HAP contract, Part B, 11b;

(9) The HAP contract made Hopkins Plaza subject to inspection by the government at any time the Metro HRA deemed necessary. See App.114; Exhibit I, HAP contract, Part B, 3d-e;

(10) The HAP contract also restricted Respondents freedom to sell Hopkins Plaza barring assignment of the HAP contract without Metro HRA's prior written consent.

G. Respondents' Business Decision to *Opt Out* of the Section 8 Program

In 2001, the Minnesota legislature repealed the 4d property tax classification for taxes payable in 2004 and beyond. Subsequently, Respondents' made the business decision to stop accepting new Section 8 vouchers in 2006. When deciding to non-renew HAP contracts, Respondents considered the administrative requirements of the Section 8 program together with the elimination of the 4d property tax incentive. In addition, Respondents assessed the inherent qualities of Hopkins Plaza and determined it was reasonable to do business without HCV's, i.e. (i) Hopkins Plaza is a rental-housing complex, consisting of 144 units – 51 one-bedroom apartments, 51 two-bedroom apartments and 42 three-bedroom town homes located near downtown Hopkins, (ii) the

rental complex has underground heated parking, laundry room facilities on each floor, and elevators in each building, and (iii) starting in 2005, Hopkins Plaza received major upgrades; i.e. all kitchens and bathrooms received new cabinets, sinks, fixtures, faucets, flooring; the apartments received new windows and new roofs, and the buildings' common areas were updated with new carpeting and paint. See App. 10; Exhibit B, Answer ¶ 6; App. 77; Exhibit H, Lisa Moe Depo., p. 20 ll 18-25, p. 21 ll 1-8, p. 24 ll 10-25, p. 25 ll 1-25, p.26 ll 20-25, p. 27 ll 1-4, p. 49 ll 4-18, p. 50 ll 1-25, p. 55 ll 20-25, p. 56 ll 12-14.

After Respondents decided to discontinue participation in the Section 8 program, Respondents developed an orderly process for the non-renewal of all Section 8 program leases and HAP contracts. First, Respondents did not accept any new HCV's. Second, Respondents did not renew all Section 8 leases and HAP contracts for one and two bedroom units. Third Respondents did not renew all three bedroom town home leases and HAP contracts. See App. 77; Exhibit H, Lisa Moe Depo., p.55, ll 14 -25, p.56, ll 1-11, p. 57, ll 24-25, p.58, ll 1-10.

H. The Lamplighter Village Apartments, St. Paul, Minnesota Has Opted to Continue Participation in the Section 8 Program.

Respondent Hopkins Plaza Limited Partnership does *not* own other properties. However, Respondent Stuart Management Corporation serves as property manager and leasing agent for the Lamplighter Village Apartments ("Lamplighter") located in St. Paul. The owner of the Lamplighter, who is not a party to these proceedings, has opted to continue participation in the Section 8 program. See App. 77; Exhibit H, Lisa Moe Depo.

P. 58, ll 20-25, p.59 ll 1-13. The Lamplighter is dramatically different from Hopkins Plaza. The Lamplighter has 75 one-bedroom units and 75 two-bedroom units, no underground parking, no elevators, no laundry facilities on each floor, the surrounding neighborhood and community is declining, the market rents are substantially less than at Hopkins Plaza. *Id.* at p. 63, ll.1-25. These factors together made it a good business decision for the owner of the Lamplighter to continue participation in the Section 8 program. *Id.* at p. 64, ll 1-8.

I. Appellant Resided at Hopkins Plaza Pursuant to a Series of One-Year, Written Lease Agreements.

The Appellant was a tenant at Hopkins Plaza from July 1, 2001 to August 30, 2006, pursuant to a series of written, one-year, lease agreements. See App. 10; Exhibit B, Answer, ¶ 9; App. 126; Exhibit J, lease agreements. For the lease period of September 1, 2005 through August 31, 2006, the Appellant lived in a two-bedroom apartment with a garage having a total rent of \$920.00 (apartment rent = \$870.00, garage rent = \$50.00). The plaintiff paid about \$559.00 per month and Respondents' accepted \$361.00 per month from the Section 8 program. See App. 10; Exhibit B, Answer, ¶ 12; App. 126; Exhibit J (lease agreement for period of September 1, 2005 though August 31, 2006 is part of Exhibit J).

J. Respondents Presented Appellant Written Notice of Their Intention to Non Renew the Lease

On April 3, 2006, in accordance with the terms of the HAP contract and apartment lease, Respondents informed Appellant, in writing, the lease would not be renewed when it expired on August 31, 2006. See App. 137; Exhibit K, Letter of Respondents to

Appellant dated April 3, 2006. Respondents gave Appellant more than 60 days notice that the lease would not be renewed. See App. 138; Exhibit L, Jimmie Edwards Depo., p. 108 ll 16-20, p. 109 ll 16-20.

K. Factors That Respondents Considered in Setting the “Budget Rent” for the Unit in Question at Hopkins Plaza.

In 2006, the “budget rent” for unit #213, the unit in question, was \$910.00 per month. See App. 77; Exhibit H, Lisa Moe Depo. p. 140 ll 3-24. A letter from Respondents to Appellant’s attorney dated July 28, 2006, stated, the “two bedroom apartment at Hopkins Plaza is \$895.00”. See App. 208; Exhibit U, Letter of B. Hays to attorney James Wilkinson dated July 28, 2006. The \$895.00 amount was based on the following: the rent amount of \$870.00 per month - the amount Appellant was charged, pursuant to the lease contract dated August 3, 2005 for the lease period of September 1, 2005 – August 31, 2006, *plus* an anticipated rent increase. It was Respondents’ business practice to increase rent from 3 to 5 % at renewal times. Thus, the \$895.00 amount quoted on July 28, 2006, reflects that policy, as to what would be the normal rent amount for unit #213 as of September 1, 2006. *Id.*

At about this same time period, the rent for a two-bedroom apartment at Hopkins Plaza *started at* \$870.00 per month. See App. 77; Exhibit H, Lisa Moe Depo., p. 140 l-25, p. 141 ll 1-25, p. 142 ll 1-25, p. 143 ll 1-25, p. 144 ll 1-23. In other words, \$870.00 was the starting point for a two-bedroom apartment in Hopkins Plaza. However, if a two-bedroom unit was on the second floor of a building, it commanded a higher rent. If a two-bedroom unit had been upgraded, the unit commanded a higher monthly rent. *Id.*

Appellant's unit, #213, was on the second floor of the building, and the unit had received upgrades. On July 28, 2006, when Respondents quoted Appellant that rent for unit #213 was \$895.00, it was based on these factors. \$895.00 per month was the market rate projected for September 1, 2006. *Id.*

After Appellant moved out on August 30, 2006, unit #213 was empty through March 2007. On March 7, 2007, Jacqueline Cannon-Hayes signed a one-year lease for that unit beginning April 1, 2007 running through March 31, 2008 with the rental amount at \$875.00 per month. See App. 209; Exhibit V, Cannon-Hayes lease dated March 7, 2007. In sum, after Appellant moved out of the apartment on August 30, 2007, unit #213 sat empty for almost seven months. See App. 77; Exhibit H, Lisa Moe Depo. p. 142 ll 10-25, p. 143 ll 1-25, p. 144 ll 1-23. The rental amount of \$875.00 per month reflects the market rate for unit #213 as of March 7, 2007. *Id.*

L. Appellant Never Provided a Doctor's Statement That It Was Necessary To Renew a Lease Because of Appellant's Alleged "Disability".

On June 20, 2006, two and one-half months after Respondents' gave Appellant notice they would not renew his lease, Appellant, through his attorney, James Wilkinson, for the very first time informed Respondents that Appellant is "disabled" and asked Respondents to accommodate his disability by renewing the HAP contract with the government and the lease agreement with Appellant. See App. 182; Exhibit M, Letter of attorney Wilkinson dated June 20, 2006. At no time, did Appellant or his attorneys present Respondents with a doctor's statement that renewing the HAP contract and lease

agreement was necessary because of Appellant's "disability." See App. 184; Exhibit N, Material produced by plaintiff regarding alleged "disability".

On July 15, 2006, Kathy Kline, Metro HRA Supervisor, informed Appellant's attorney, that the Appellant had "located an appropriate alternate rental unit that he is happy with". See App. 190; Exhibit O, Kline letter dated July 15, 2006.

In a letter to Appellant's lawyer on July 18, 2006, Respondent's affirmed that Hopkins Plaza was no longer participating in the Section 8 program. See App. 191; Exhibit P, Hayes Letter dated July 18, 2006.

On August 30, 2006, Appellant moved put of Hopkins Plaza, pursuant to a settlement of an eviction action commenced by Respondents. See App. 10; Exhibit B, Answer, ¶ 9; App. 192; Exhibit Q, Eviction file.

ARGUMENT

I. STANDARD OF REVIEW

On an appeal from a grant of summary judgment, the appellate court asks whether there are any genuine issues of material fact in dispute and whether the trial court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Mere averments set forth in the pleadings are insufficient to counter a motion for summary judgment. Minn. R. Civ. P. 56.05. Rather, there must be evidence sufficient to establish an essential element on which the nonmoving party bears the burden of proof. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). Conversely, summary judgment on a claim is mandatory against a party with the burden of proof who fails to establish an essential

element of its claim, because that failure renders all other facts immaterial. *Lloyd v. In Home Health, Inc.*, 523 N.W.2d 2, 3 (Minn. App. 1994). On review, this Court will affirm a grant of summary judgment if it can be sustained “on any ground.” *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

The district court properly granted summary judgment based upon its interpretation of the Minnesota Human Rights Act (“MHRA”). Statutory interpretation is a question of law subject to de novo review. *Metro. Sports Facilities Comm'n v. County of Hennepin*, 561 N.W.2d 513, 515 (Minn. 1997).

II. TENANTS ELIGIBLE TO PARTICIPATE IN THE FEDERAL SECTION 8 PROGRAM ARE NOT A PROTECTED CLASS UNDER THE MINNESOTA HUMAN RIGHTS ACT

A. Statutory Interpretation

The MHRA provides, in pertinent part, that it is an unfair discriminatory practice

[f]or an owner . . . or managing agent of, or other person having the right to . . . rent or lease any real property, . . . to refuse to . . . rent, or lease or otherwise deny to or withhold from any person or group of persons any real property because of . . . status with regard to public assistance.

Minn. Stat. § 363A.09, subd. 1. The MHRA defines “status with regard to public assistance” to mean “the condition of being a recipient of federal, state or local assistance, including medical assistance, or of being a tenant receiving federal, state or local subsidies, including rental assistance or rent supplements.” Minn. Stat. § 363A.03, subd. 47.

The fundamental issue on appeal is whether the Minnesota Legislature intended to include tenants participating in the federal Section 8 program in the class protected because of its “status with regard to public assistance” under the MHRA such that an owner’s decision to abstain or not to continue participation in the Section 8 program is an unfair discriminatory practice as a matter of law. Appellant erroneously asks the Court to attribute this intent to the legislature and to conclude that the MHRA mandates owner participation in the federal Section 8 program. Appellant’s proposed construction of the MHRA is without support in the language or legislative history of the Act, is inconsistent with the many provisions addressing the Section 8 program throughout the Minnesota Statutes, and is incongruous with the fundamental, clear, and repeatedly-expressed intent of both the Minnesota legislature and the United States Congress to preserve the *voluntary* nature of an owner’s participation in the Section 8 program. To the extent that all of Appellant’s arguments emanate from the flawed and unsupported assertion that an owner’s participation in Section 8 is mandatory, and that mere non-participation in the program constitutes an unfair discriminatory practice, all of his claims of discrimination are without merit.

“The objective of all statutory interpretation is to give effect to the intention of the legislature in drafting the statute.” *State v. Thompson*, 754 N.W.2d 352, 355 (Minn. 2008) (quotation omitted). “The principal method of determining the legislature’s intent is to rely on the plain meaning of the statute.” *Id.* When a statute is ambiguous or unclear and does not convey a plain meaning, a court will construe the language to determine legislative intent by examining other factors, “including the need for the law, the

circumstances of its enactment, the purpose of the statute, and the consequences of a certain interpretation.” *Kersten v. Minn. Mut. Life Ins. Co.*, 608 N.W.2d 869, 875 (Minn. 2000).

Moreover, Minnesota courts will not give effect to the statute’s plain meaning if, on its application to the facts of the case, it produces an absurd or an unreasonable result that departs from legislative intent. Minn. Stat. § 645.17(1); *Olson v. Ford Motor Co.*, 558 N.W.2d 491, 494 (Minn. 1997). The court must “assume that the legislature does not . . . intend absurd or unreasonable results,” *State v. Koenig*, 666 N.W.2d 366, 372 (Minn. 2003), and a statute may be deemed absurd “only in rare cases where the plain meaning ‘utterly confounds a clear legislative purpose.’ ” *Hyatt v. Anoka Police Dep’t*, 691 N.W.2d 824, 827 (Minn. 2005) (quoting *Mutual Serv. Cas. Ins. Co. v. League of Minnesota Cities Ins. Trust*, 659 N.W.2d 755, 761 (Minn. 2003)).

B. Appellant’s Attempted Plain Meaning Interpretation Produces an Ambiguous or Absurd Result

Appellant attempts to argue that the relevant statutory language is unambiguous and under the plain, or literal, meaning of the MHRA, Respondents discriminated against him as a matter of law by deciding not to continue participation in the Section 8 program and that further inquiry into the statute’s meaning or the legislative intent behind the statute is therefore precluded. Appellant’s argument on this point fails for at least two reasons and illustrates the flawed premises of his appeal. First, Appellant’s own “plain meaning” interpretation by no means establishes Respondents’ liability under the MHRA: the literal terms of the Act do not prohibit Respondents’ complained-of behavior.

Second, and more importantly for this case, Appellant's purported "plain meaning" interpretation in fact relies on a selective and self-serving reading of the MHRA that exploits the statute's lexical and semantic uncertainty and demonstrates, at the very least, that the statute is ambiguous, unclear, and conveys no plain meaning, warranting further construction to establish the legislature's intent in enacting the disputed provisions. As Respondents will demonstrate, the legislature never intended (or contemplated) that an owner's participation would become mandatory by operation of the MHRA. Consequently, and contrary to Appellant's assertions, Respondents' complained-of actions did not trigger the protections of the MHRA at all, and Respondents were entitled to, and were properly granted, summary judgment as a matter of law.

It is undisputed that the MHRA requires Appellant, to make a claim under the Act, to show that Respondents (1) refused to rent to him (2) "because of" (3) his "condition of being a recipient of federal, state or local subsidies, including rental assistance or rent supplements." Appellant argues that he can demonstrate a *per se* violation of the MHRA's plain meaning. In fact, Appellant's claim is facially deficient because he cannot show a prohibited act (the refusal to rent), causation, or membership in a protected class.

First, Respondents did not refuse "to rent" to Appellant under any plain meaning of the verb "to rent," which must control here. "Plain meaning presupposes the ordinary usage of words that are not technically used or statutorily defined, relies on accepted punctuation and syntax, and draws from the full-act context of the statutory provision." *Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002). Respondents refused to

enter into a heavily-regulated contractual relationship with the federal government whereby Respondents would receive a percentage of Appellant's rent from Appellant himself and the balance from the government, contingent on Respondents' ongoing compliance with substantial bureaucratic and administrative requirements associated with participation in the Section 8 program. Respondents decided, for reasons that had nothing to do with Appellant's status with respect to public assistance, to not continue participation in the Section 8 program. As a result of that decision, Appellant was ineligible to benefit from Respondents' participation in the Section 8 program and was precluded from using a HCV to pay a portion of his rent. Appellant has never alleged, and there is no evidence, that Respondents ever refused to rent him an apartment under a traditional standard-form property-rental agreement. Rather than relying on the plain meaning of the verb "to rent," Appellant is urging the Court to interpret the term within the highly technical confines of the Section 8 program, which established not a typical landlord-tenant rental agreement but a third-party contract scenario.

Second, Appellant has not demonstrated that, as a matter of law, Respondents took the complained-of action "because of" his alleged protected status. As noted above, the decision that resulted in the end of Appellant's tenancy was not Respondents' refusal to rent to him, but Respondents' decision to not continue participation in the Section 8 program. There is no evidence of a causal connection between Respondents' election to cease participation in the Section 8 program and Appellant's status with regard to public assistance. Appellant may have been unable to continue renting from Respondents pursuant to the parties' previous voluntary Section 8 arrangement because of

Respondents' decision to cease participation in the program. But Appellant has no evidence to suggest that Respondent decided to not renew the HAP contract with Metro HRA because of Appellant's eligibility to participate in the Section 8 program. This Court has previously looked for a *per se* causal nexus between an owner's decision to not participate in the Section 8 program and discrimination and found that none exists. In *Babcock v. BBY Chestnut Ltd. Partnership*, the Court observed:

To contend that a refusal to participate in the Section 8 program constitutes a *per se* violation of section 363.03 is to disregard the importance of the landlord's intent under the statute. [A] landlord might choose not to participate in the Section 8 program for non-discriminatory reasons, such as an unwillingness to bear the cost of satisfying the administrative requirements of the program.

2003 WL 21743771, 1 (Minn. App. 2003).² As the *Babcock* court observed, no *per se* violation of the MHRA arises from a refusal to participate in the Section 8 program, and at the very least, a Plaintiff attempting to establish the discriminatory nature of such a decision would need to show a causal link and rebut any non-discriminatory reasons offered by the owner for not continuing participation in the Section 8 program. Here, Appellant has demonstrated no causal connection whatsoever (let alone any intent or animus on Respondents' part) between Respondents' decision to cease participation in the Section 8 program and the fact that Appellant would like to take advantage of the Section 8 program in establishing a lease agreement with Respondents.

² A full and correct copy of the *Babcock* opinion is attached as Exhibit R, App. 201. And although *Babcock* is an unpublished opinion that obviously has no precedential value, it is strongly persuasive here to the extent that it is a relatively recent expression of this Court's opinion that owner participation in the Section 8 program is voluntary.

Finally, Appellant's claim fails under his proposed "plain meaning" of the MHRA, because he cannot show that the Act clearly and unambiguously includes Section 8 tenants in the group whose "[s]tatus with regard to public assistance" makes them a protected class under the statute. An individual is in that class if he is "a tenant receiving federal, state or local subsidies, including rental assistance or rent supplements." Minn. Stat. § 363A.03, subd. 47. The language of the statute – "receiving . . . subsidies . . . assistance . . . or . . . benefits" – simply does not unambiguously apply to Appellant or any other tenant who is merely qualified to benefit from the Section 8 program, which does not provide for any direct distribution of any sort to tenants. Appellant does not claim that he was discriminated against because of his ongoing receipt of government assistance from any other program that disbursed funds to him directly. And merely qualifying for participation in the Section 8 program (the extent of Appellant's status here) does not constitute "receiving" benefits, and Appellant never "received" a direct subsidy, assistance, supplement, or payment of any kind, pursuant to the rental agreement he had with Respondents during the time Respondents were participating in the Section 8 program. Nor, by their plain meanings, do the terms "subsidies," "rental assistance," and "rent supplements" unambiguously designate the relief enjoyed by tenants whose landlords are participating in the Section 8 program. Those terms, by their plain meaning, designate monetary assistance, while under the Section 8 program, tenants, instead of receiving such assistance, pay a portion of their rent to the owner, who then receives a monetary amount from the government, intended to supplement the rent actually received from the tenant under the scheme. The tenant benefits from the fact that

his landlord is compensated for renting to him. This indirect benefit is only “received” by the tenant in the form of a diminished financial obligation to the owner. It is simply implausible to contend, as Appellant does, that this convoluted shifting of financial burdens and obligations in the context of a third-party contract is unambiguously designated by the language of the MHRA.

Indeed, to the extent that there is a monetary distribution under the Section 8 statutory scheme involving a receipt of funds, it goes to the owner, who receives the payment directly from the government. Respondents also note that Minn. Stat. § 469.002, subd. 24 (concerning affordable housing), “Section 8 program” is defined as “an existing housing assistance payments program under Section 8 of the United States Housing Act of 1937, United States Code, title 42, section 1437f, as amended.” The legislature obviously chose to characterize Section 8 as a “payments program,” but declined to use the word “payments” in the MHRA provisions. Had the legislature intended to include Section 8 tenants within the protected class of public assistance recipients for the purposes of the MHRA, it could obviously have done so³, either explicitly or by characterizing the relevant assistance in terms consistent with the definition of Section 8 found elsewhere in the statutes. It chose to do neither, which at the very least demonstrates the ambiguity of the provision and the failure of Appellant’s

³ But only by amendment, because, as is discussed below, the legislature adopted the MHRA definition of “status with regard to public assistance” one year before Section 8 became law, demonstrating conclusively that the legislature could not have intended to include Section 8 tenants in the protected class.

attempt to establish Respondents' liability as a matter of law based on a plain reading of the statute.

Appellant's strained attempt to identify a plain meaning of the relevant MHRA provisions conclusively demonstrates both that he has not demonstrated a *per se* violation of the MHRA and that the statutory language is far too ambiguous and unclear to lend itself to a plain meaning interpretation. It is therefore appropriate to resolve the ambiguity "by looking to legislative intent, agency interpretation, and principles of continuity which include consistency with laws on the same or similar subjects." *Occhino v. Grover*, 640 N.W.2d 357, 360 (Minn. App. 2002) (citing Minn. Stat. § 645.16).

C. The MHRA Evinces No Legislative Intent to Require that Owners Participate in the Section 8 Program Under Penalty of Discrimination Liability

Appellant proposes that, when read plainly, or literally, the MHRA provides that an owner's mere decision to not participate or not continue participation in the Section 8 program constitutes discrimination under the MHRA against potential Section 8 tenants as a matter of law. Appellant's interpretation is indefensible for at least two reasons. First, as just demonstrated, the statutory language is ambiguous in that it has more than one reasonable interpretation, and cannot simply be read literally. *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986). Second, Appellant's "plain reading" of the statute, according to which an owner is strictly liable for discrimination under the MHRA because it decides to not participate in the Section 8 program, must fail unless there is evidence that the legislature intended participation in the Section 8 program to be

mandatory. Not only is there no such evidence, but an appropriate application of the relevant interpretive canons to the statute shows clearly that the result proposed by Appellant is absurd and is incongruous with, and contrary to, the legislature's intent in adopting the disputed language. See *Occhino*, 640 N.W.2d at 360 (noting that the three interpretive canons are the "plain meaning" canons, the "extrinsic source canons, which include legislative sources, agency interpretation, and continuity principles," and the "substantive policy canons").

In identifying the absurdity proposed by Appellant's attempt at a plain reading, Respondents are by no means requesting that this Court substitute its judgment concerning the wisdom of the statute for that of the legislature. Rather, Respondents ask the Court, as is appropriate when the plain meaning of a statute is absurd, only to "deviate a little from the received sense and literal meaning of the words, and interpret the instrument in accordance with what may appear to have been the intention and meaning of its framers." *Kellerman v. City of St. Paul*, 211 Minn. 351, 353, 1 N.W.2d 378, 380 (1941) (quotation omitted). Because the intention of the legislature that made a protected class of "tenant[s] receiving federal . . . rental assistance or rent supplements" was not to mandate owner participation in the Section 8 program, this Court should reject Appellant's argument that withdrawal from the program is discriminatory as a matter of law and affirm the district court's grant of summary judgment.

D. The Minnesota Legislature Never Considered the Section 8 Program When It Adopted the Phrase “Status With Regard to Public Assistance”

A single fact of chronology is sufficient here to dispose of Appellant’s argument that the Minnesota legislature intended to include Section 8 tenants in the class of individuals protected under the MHRA by virtue of their “status with regard to public assistance.” The Section 8 program became law after the “public assistance” provision of the MHRA was adopted, and it cannot be argued that the MHRA provision was adopted to right any perceived discrimination against Section 8 tenants. *See* Minn. Stat. § 645.16 (2002) (stating that legislative intent may be ascertained by looking to “the former law, if any, including other laws upon the same or similar subjects”).

In 1973, the Minnesota legislature amended the MHRA to make “status with regard to public assistance” a protected class. 1973 Minn. Laws Ch. 729 §§ 3, 16. The legislature defined that status as “the condition of being a recipient of federal, state, or local assistance, including medical assistance, or of being a tenant receiving federal, state, or local subsidies, including rental assistance or rent supplements.” 1973 Minn. Laws Ch. 729 § 1. The definition has not changed. Minn. Stat. § 363A.03, subd. 47. Since then it has been an unfair discriminatory practice to, among other things, refuse to sell, rent or lease real property because of an individual’s status with regard to public assistance. Minn. Stat. § 363A.09, subd. 1.

In 1974, Congress amended the United States Housing Act of 1937 to create the Section 8 program. Through the Section 8 program, Congress hoped to “ai[d] low-income families in obtaining a decent place to live,” 42 U.S.C. § 1437f(a) (1988 ed.,

Supp. III), by subsidizing private owners who would rent to low-income tenants. As noted above, under Section 8 program, qualified tenants make rental payments based on their income and ability to pay; HUD then makes “assistance payments” to the private owners in an amount calculated to make up the difference between the tenant’s contribution and a “contract rent” agreed upon by the owners and HUD. The tenant does not receive any direct payment under the Section 8 program.

The Minnesota legislature could not have been aware of the Section 8 program’s unique assistance structure when it amended the MHRA in 1973. It is therefore impossible to say that the legislature intended to protect Section 8 tenants by the amendment. In addition, the definition of Section 8 found elsewhere in the Minnesota statutes is significantly different from the MHRA’s definition of public-assistance class members. When a statute does not expressly define a term, but the term is defined in a related statute, the statutes are *in pari materia* and should be construed together. *State v. Kolla*, 672 N.W.2d 1, 7 (Minn. App. 2003). “Section 8 program” is defined elsewhere in the Minnesota Statutes as a “housing assistance payments program”; that definition refers to the federal program, which makes “assistance payments” to owners. Minn. Stat. § 469.002, subd. 24. The MHRA protects a tenant “receiving federal . . . rental assistance or rent supplements.” There is no mention of tenants “receiving” monetary assistance under Section 8, and no mention of “payments” in the relevant MHRA provisions. The two statutes do not designate the same groups of tenants.

In the 35 years since the Section 8 program became law, the legislature has not amended the MHRA to unequivocally bring Section 8 tenants within the protection of the

MHRA, and thereby take the drastic step of transforming non-participation in the Section 8 program into a *per se* act of discrimination. In fact, the legislative history demonstrates that the legislature has declined the opportunity to make any such radical revision to the housing code: In July 1999, when legislature passed Chapter 504, the intent of which was to consolidate, clarify, and recodify the majority of Minnesota's housing statutes under one chapter. Hearing on S.F. No. 2232 Before the Senate Comm. on Jobs, Housing and Cmty. Dev. (May 3, 1999) (Statement of Sen. Higgins). When the bill was discussed in both House and Senate committees, it was made clear that no substantive changes to the current housing laws were intended. *Id.*; Hearing on H.F. 2425 Before the House Comm. on Civil Law (May 3, 1999) (Statement of Rep. Dawkins). Making Section 8 program participation mandatory would unquestionably constitute a substantive change from then-current housing laws.

It is absurd and illogical to suggest, as Appellant does repeatedly, that discrimination because of participation in the Section 8 program was a wrong the legislature sought to correct in adopting the "status with regard to public assistance" language. There are many forms of discriminatory activity targeted by the MHRA's language. By prohibiting discrimination against people receiving public assistance, the statute prevents owners from, for instance, refusing to rent based on a perception that individuals receiving assistance are not creditworthy, lack an adequate or reliable source of income, are more likely to have an illegal source of income, or generally represent a greater financial risk than prospective tenants who are not receiving such assistance. Under the MHRA, an owner may not require public-assistance recipients to pay a higher

security deposit, agree to live in less desirable units, or agree to waive rights, privileges, amenities, or services afforded other tenants. The MHRA protects public-assistance recipients against a panoply of illegal and invidious landlord behavior motivated by discriminatory animus and prejudicial stereotypes, but it does not, by its terms or according to interpretive canons, protect Section 8 tenants when a property owner decides to cease participation in the Section 8 program as to all tenants for business reasons.

E. Other Provisions in the Minnesota Statutes Mentioning Section 8 Plainly Indicate that Participation in the Program Is Voluntary

A court seeking to clarify legislative intent may look to other statutes upon the same or similar subjects. *Harris v. County of Hennepin*, 679 N.W.2d 728, 732 (Minn. 2004); *see also State v. Lucas*, 589 N.W.2d 91, 94 (Minn. 1999) (noting that it is appropriate for “two statutes with common purposes and subject matter to be construed together to determine the meaning of ambiguous statutory language”). A review of other Minnesota statutory provisions referencing Section 8 demonstrates that Appellant’s proposed reading, whereby the program is mandatory and non-participation is discriminatory as a matter of law, is anomalous, absurd, and contrary to legislative intent.

Minn. Stat. § 469.004, subd. 5, authorizing county and multicounty housing authorities to manage certain housing programs, states:

[t]his subdivision does not apply if a county or multicounty authority has not initiated or does not have in progress an active program or has not applied for a public housing, Section 8, or redevelopment program from the federal government for a period of 12 months after its establishment.

Minn. Stat. § 469.012, subd. 2h, provides that “[a housing] authority may apply for, enter into contracts with the federal government, administer, and carry out a Section 8

program.” Minn. Stat. § 469.040, subd. 4, governing multifamily rental housing facilities, provides:

The housing and redevelopment authority for the city in which the facility is located . . . shall annually certify to the assessor responsible for assessing the facility, at the time and in the manner required by the assessor, the number of units in the facility that are . . . receiving operating subsidy under Section 9 or rental assistance under Section 8 of the United States Housing Act of 1937.

Minn. Stat. § 471.9997 provides that

At least 12 months before termination of participation in a federally assisted rental housing program, including project-based Section 8 and Section 236 rental housing, the owner of the federally assisted rental housing must submit a statement regarding the impact of termination on the residents of the rental housing to the governing body of the local government unit in which the housing is located.

Each of these provisions addresses legal obligations that are contingent upon, and triggered by, a housing authority’s or an owner’s decision to begin, continue, or end participation in the Section 8 program: Minn. Stat. § 469.004, subd. 5 becomes effective “*if* a county or multicounty authority has not initiated or does not have in progress . . . or has not applied for . . . Section 8” (emphasis added); Minn. Stat. § 469.012, subd. 2h, provides that “[a housing] authority *may*” participate in Section 8 (emphasis added); Minn. Stat. § 469.040, subd. 4 establishes reporting requirements only as to those “units in the facility that are . . . receiving . . . rental assistance under Section 8” (obviously contemplating the possibility that some units are not receiving that assistance); and Minn. Stat. § 471.9997 provides notice requirements in the event of an owner’s withdrawal from “a federally assisted rental housing program,” which Appellant argues means a tenant-based Section 8 program. Each of these examples demonstrates an explicit

legislative understanding that participation in the Section 8 program is voluntary, and that Appellant's tortured construction of the MHRA is absurd on its face. None of these contingency provisions would be necessary if the legislature intended participation in the Section 8 program to be mandatory.

Two more Minnesota statutory provisions further indicate the unequivocal legislative intent to maintain the voluntary nature of participation in the Section 8 program. Minn. Stat. § 504B. 255 provides:

The landlord of federally subsidized rental housing must give residential tenants of federally subsidized rental housing a one-year written notice under the following conditions:

- (1) a federal section 8 contract will expire;
- (2) the landlord will exercise the option to terminate or not renew a federal section 8 contract and mortgage;
- (3) the landlord will prepay a mortgage and the prepayment will result in the termination of any federal use restrictions that apply to the housing; or
- (4) the landlord will terminate a housing subsidy program.

The notice shall be provided at the commencement of the lease if the lease commences less than one year before any of the conditions in clauses (1) to (4) apply.

This Court's interpretation of this provision in *Occhino v. Grover* is instructive here. 640 N.W.2d 357 (Minn. App. 2002). The issue in *Occhino* was whether this termination-notice provision applies only to project-based Section 8 housing or also protects tenant-based participants, that is, whether the latter were entitled to notice at all. *Id.* at 361. In framing the issue thus, the parties and the Court in *Occhino* clearly indicated the mutual and universal understanding that tenant-based Section 8 programs could be discontinued;

the only issue was the amount of notice required. The Court interpreted the statutory provision, which, the Court said, “supports a reading that would not apply the one-year notice provision to tenant-based subsidies,” *id.*, and held: “Because Occhino received tenant-based rather than project-based rental assistance, the district court correctly concluded that he was not entitled to a one-year termination notice under Minn. Stat. § 504B.255.” *Id.* at 362. It is impossible to reconcile this holding with Appellant’s portrayal of the Section 8 program as mandating that owners enter into HAP contracts with the PHA on the basis of a single prospective tenant’s demand that they do so. And it strains plausibility to argue, as Appellant might, that *Occhino* stands for the proposition that while one-year notice might be required under a project-based program, termination is not available at all under a tenant-based program. This radical departure from the universal understanding of the tenant-based Section 8 program would not simply be presumed without commentary by the Court.

The legislature adopted Minn. Stat. § 273.126 - the “4d property tax classification,” in 1997. As noted above, this provision offered tax incentives to owners who made a minimum percentage of units in an apartment building available to Section 8 HCV holders. The indisputable purpose of this provision was to encourage owners to make the maximum possible number of units in a given apartment building available to Section 8 tenants by providing a financial incentive to do so. Respondents in this matter responded consistent with the legislative purpose by choosing, upon passage of the law, to participate in the Section 8 program. After the “4d” program was repealed in 2001, Respondents decided to not continue participation in the Section 8 program. Obviously,

the legislature would never need to offer incentives to owners to participate in a program in which participation was mandatory; had that been the case, section 273.126 would represent a pure act of statutory superfluity, akin to offering employers financial incentives for complying with race-discrimination laws.

One year after *Occhino*, this Court considered Minn. Stat. § 273.126 in *Babcock*, a case whose facts and principal legal issue are indistinguishable from those of the present case: there, the Court framed the issue as whether “a landlord’s refusal to participate in the Section 8 voucher program constitutes a per se violation of the MHRA’s prohibition of discrimination based on receipt of public assistance.” *Babcock*, 2003 WL 21743771 at *1. In an opinion written by Judge Lansing, the Court held that “[b]ecause participation in the Section 8 program is voluntary, a landlord’s refusal [to participate] is not a per se violation of [the MHRA].” *Id.* at *2. Specifically commenting on the utility of Minn. Stat. § 273.126 in discerning the legislature’s perspective of Section 8 participation, the Court observed that in passing a law giving financial incentives to landlords who choose to participate in the Section 8 program, the “legislature recognized the administrative burdens of the Section 8 program – and, implicitly, its voluntary nature.” *Id.* It is of course true that unpublished opinions of this Court are not binding precedent. *Vlahos v. R & I Constr., Inc.*, 676 N.W.2d 672, 676 n. 3 (Minn. 2004). But it is also true that one primary reason unpublished opinions are not precedential is because they “rarely contain a full recitation of the facts.” *Id.*; see *Powell v. Anderson*, 660 N.W.2d 107, 123 (Minn. 2003) (observing that an unpublished opinion “is too summary to consider it an independent analysis of the merits”). But the operative facts in *Babcock* were sufficiently

recited that their similarity to the present dispute is indisputable: a tenant sued her landlord because the owner refused to participate in the Section 8 program. And the analysis in *Babcock* addresses the factual, legal, and policy implications of the situation. Therefore, while not precedential, the *Babcock* holding is highly instructive and persuasive. Appellant has given no good reasons why this Court should now distinguish, disregard, and reject *Babcock* when the facts, applicable law, and insights into legislative intent of the two cases are so similar.

Whether addressing project-based or tenant-based programs, these provisions all make clear that participation in the Section 8 program is voluntary. Although Appellant attempts to distinguish each statutory provision that addresses project-based, as opposed to tenant-based, programs, this is largely a distinction without a difference for the purposes of the issue before the court: whether the legislature intended to make participation in the Section 8 program mandatory as to owners. The MHRA protects “any person or group of persons.” Minn. Stat. § 363A.09, subd. 1(a). Under Plaintiff’s *per se* theory of MHRA liability, it should make no difference whether the decision to discontinue participation in the Section 8 program concerns a tenant-based or a project-based program. If participation is mandatory, all owners and PHAs are bound by law to participate in the Section 8 program.

F. Relevant Federal Sources Demonstrate that There Is No Legal Obligation to Participate in the Section 8 Program

Appellant does not attempt to argue that an owner’s participation in the Section 8 program is mandatory under the federal statutory or regulatory scheme or that federal

courts. A brief review of relevant, and instructive, federal sources shows that, indeed, the United States Congress has repeatedly expressed its intention that the Section 8 program remain a voluntary program and that federal courts have consistently concluded as much.

The language of the program itself provides that “the selection of tenants shall be the function of the owner.” 42 U.S.C. § 1437f(d)(1)(A); *see also* 24 C.F.R. § 982.452(b)(1) (making an owner responsible for “selecting a[n HCV] holder to lease the unit, and deciding if the family is suitable for tenancy of the unit”). 24 C.F.R. § 982.307 permits owners to evaluate the fitness of Section 8 recipients as they would any other prospective tenant, and encourages owners to screen potential tenants on the basis of their tenancy histories, taking into account such factors as housekeeping habits and respect for the rights of other tenants. Granting owners this much discretion in management decisions would obviously be unnecessary in the context of a mandatory program. On the basis of this discretion, several courts have held that the federal scheme does not require owners to participate in the Section 8 program. *See Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 296 (2d Cir. 1998) (“Participation by landlords is voluntary; they lawfully may refuse to accept applications from Section 8 beneficiaries.”); *Knapp v. Eagle Property Management Corp.*, 54 F.3d 1272, 1282 (7th Cir.1995) (stating that Section 8 is a “voluntary federal program”). In *Hill v. Group Three Housing Development Corp.*, 799 F.2d 385 (1986), the United States Court of Appeals for the Eighth Circuit discussed the voluntary nature of the Section 8 program. The court found that by leaving management decisions, including the selection of tenants, to the owner, Congress intended to encourage participation in the program. *Id.* at 388.

The repeal of two Section 8 provisions further demonstrates the program's voluntary nature, particularly insofar as each provision hindered an owner's ability to limit or discontinue participation in the Section 8 program. One was the so-called "endless lease" provision, 42 U.S.C. § 1437f(d)(1)(B), which, until 1996, required landlords to renew leases for Section 8 tenants and precluded them from terminating a Section 8 tenancy, unless they filed court proceedings and were able to show good cause. In 1996, however, Congress amended this section of the FHA as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub.L. No. 104-134, § 203, 110 Stat. 1321, at *1321-281 (1996), by inserting "during the term of the lease" into both clause (ii) and clause (iii) of the section. The immediate effect of the statutory change was to eliminate the "endless lease" interpretation of the provision and make clear that an owner can terminate a Section 8 tenant's lease, as well as its participation in the Section 8 program with respect to that tenant, upon expiration of the tenant's lease.

The other repealed provision, often called the "take-one, take-all" provision, required an owner who accepted even one Section 8 tenant to accept all such tenants. *See Peyton v. Reynolds Associates*, 955 F.2d 247 (4th Cir. 1992). In effect, "this section prohibited owners who participate in the Section 8 program from refusing to rent to people because they are Section 8 certificate holders." *Salute v. Stratford Greens Garden Apartments*, 136 F.3d 293, 297 (2nd Cir. 1998). The provision was "repealed as part of the Quality Housing and Work Responsibility Act of 1998 because it was having the unintended effect of discouraging landlords from accepting their first Section 8 tenant," *Franklin Tower One, L.L.C. v. N.M.*, because doing so would require that they accept

every other Section 8 tenant. 725 A.2d 1104, 1109 (N.J. 1999). The obvious Congressional intent in repealing the “take one, take all” provision” was to allow landlords to not participate in Section 8 at all, or, if they do, to accept as few or as many Section 8 tenants as they see fit.

As a matter of statutory construction, courts presume that the legislature uses the same words the same way, even in different statutes. *Angell v. Hennepin County*, 565 N.W.2d 475, 479 (Minn. App. 1997), *aff'd*, 578 N.W.2d 343 (Minn. 1998). Here, a presumption arises that the meaning of the phrase “Section 8 program” remains consistent throughout the Minnesota statutory scheme, and that landlord’s rights and responsibilities under the program – and specifically, the right to participate, or not, in the Section 8 program – is not granted by the legislature in one statutory section and withdrawn in another. It would be absurd to read one statutory section as defining participation in Section 8 as voluntary while reading another section as participation in Section 8 mandatory.

III. APPELLANT’S PREEMPTION ANALYSIS OF 24 C.F.R. § 982.53 IS FLAWED

Appellant argues that the indisputably voluntary character of the federal Section 8 program does not preempt the protections of the MHRA or preclude the Minnesota legislature from making Section 8 tenants a protected class. Respondents do not dispute the proposition that under certain circumstances, states are free to pass discrimination laws that protect categories not included in their federal counterparts, or the assertion that the Minnesota legislature could have included Section 8 tenants in the class of individuals

protected because of their “status with regard to public assistance.” *See Goins v. West Group*, 635 N.W.2d 717, 726 (Minn. 2001) (noting that sexual orientation is a protected category under the MHRA but not under Title VII). But Appellant’s cursory preemption analysis mischaracterizes vital relevant regulatory language, disregards other controlling regulatory language, and vainly attempts to show that the MHRA authorizes tenants to disregard a fundamental requirement of Section 8 law, as well as every Minnesota statutory provision and judicial opinion providing that an owner’s participation in the Section 8 program is voluntary. When properly considered, the HUD regulations express a congressional desire to protect the voluntary nature of the Section 8 program, unless there is an unambiguous expression of state legislative intent to the contrary, which is simply not the case here.

Congress may preempt state law with express statutory language, by enacting a comprehensive regulatory scheme that leaves no room for state regulation, or by so-called “conflict preemption,” which occurs when compliance with both state and federal laws is impossible, *Fla. Lime Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or when the state law is “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Here, in the absence of express statutory language or a comprehensive regulatory scheme, and in light of the relevant regulatory language expressing a desire for the federal Section 8 program to work in conjunction with state and local laws, the preemption, if any, will be conflict preemption.

The relevant regulatory provision for preemption analysis is 24 C.F.R. § 982.53, added in 2000:

Nothing in part 982 is intended to pre-empt operation of State and local laws that prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder. However, such State and local laws shall not change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program.

Appellant relies entirely on the first sentence of this provision to argue that the federal law in no way intends to preempt the operation of the MHRA public-assistance language. This reading is flawed both because the first sentence of the provision cannot reasonably apply to Appellant or the disputed Minnesota provision and because Appellant makes no attempt to account for the second sentence of 24 C.F.R. § 982.53, which expresses a clear congressional intent to maintain the voluntary nature of the Section 8 program.

A. The First Sentence of 24 C.F.R. § 982.53 Does Not Apply to Appellant

Concerning the first sentence, the state law at issue here, as has been amply demonstrated, simply does not “prohibit discrimination against a Section 8 voucher-holder because of status as a Section 8 voucher-holder.” Therefore, while it is true, as Appellant argues, that the HUD regulations “expressly allow for Minnesota’s protection of voucher holders,” (Appellant’s brief at 23), the Minnesota statute at issue provides no such protection. As is argued above, the MHRA provision at issue was passed before Section 8, and therefore could not have contemplated Section 8 voucher-holders as belonging to the protected class. Second, the decision of an owner to abstain or withdraw from participation in the Section 8 program is not “discrimination against” anyone; it is a business decision to not enter into or not continue a contractual relationship with a

government entity that makes it henceforth impossible for the owner to accept an HCV as partial payment of a tenant's rent due.

B. The Second Sentence of 24 C.F.R. § 982.53 Protect's Section 8's Voluntariness Requirement

Appellant conspicuously ignores the second sentence of 24 C.F.R. § 982.53, which provides: "However, such State and local laws shall not change or affect any requirement of this part, or any other HUD requirements for administration or operation of the program." This language, by its plain terms, intends to protect the integral, fundamental characteristics of the Section 8 program and preclude State and local laws from interfering with the basic precepts of the federal statutory and regulatory scheme. Under a conflict-preemption analysis, this provision will prevail against any state law that makes compliance with it impossible or if any state law poses "an obstacle to the accomplishment and execution of [its] full purposes and objectives." *Hines*, 312 U.S. at 67. As demonstrated above, Congress has repeatedly, and clearly, expressed its intent to maintain the voluntary nature of participation in the Section 8 program, both by promulgating language giving owners great autonomy in selecting tenants and in repealing language preventing owners from withdrawing from the Section 8 program or never entering the program to begin with.

This participatory autonomy is reflected in the Congressional decision to repeal the endless-lease and take one, take all provisions, illustrating that two fundamental requirements of the Section 8 program are the owner's right to end a tenant's lease and the owner's right to refuse to rent to all Section 8 tenants simply because he rents to one

Section 8 tenant. The statute requires that owners participate in the tenant selection process and screen prospective tenants according to specific criteria. The statute requires that certain Section 8 tenants receive specific notice before their lease is terminated. The HUD requirements for the administration and operation of the program are permeated with provisions whose organizing principle and dominant characteristic is that participation in the program is voluntary.

For example, 24 C.F.R. § 982.310(d) provides that an owner may terminate a Section 8 tenancy on various grounds, including

[t]he owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit [or a] business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

The program's termination provisions are clearly "requirements for administration or operation of the program," as the phrase is used in 24 C.F.R. § 982.53. Appellant's proposed interpretation of "status with regard to public assistance," based as it is on the mandatory participation in the Section 8 program, would make this administrative, operational provision entirely unnecessary and would make it impossible for an owner to exercise its right to terminate a Section 8 tenancy – a right indisputably guaranteed by the regulation – without committing a *per se* violation of the MHRA. One would be hard pressed to think of a more thorough "obstacle to the accomplishment and execution of the full purposes and objectives of Congress," as the latter are expressed in 24 C.F.R. § 982.310(d), than Appellant's absurd reading of the MHRA. *Hines*, 312 U.S. at 67. In the context of this conflict, the federal law must prevail.

Furthermore, it would be impossible for an owner to comply with the notice provisions of the HUD regulations, as well as the MHRA as constructed by Appellant: an owner who terminated a lease after appropriate notice would be liable for discrimination. It would be impossible for a landlord to engage in the client-selection process mandated by the HUD regulations, as well as the MHRA as constructed by Appellant: any tenant eligible for the Section 8 program would have to be accepted as a matter of law. The federal statute was enacted “[f]or the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing” 42 U.S.C. § 1437f (a). Congress has obviously determined that the “take one, take all” provision and the “endless lease” provision frustrated the achievement of that purpose, and repealed both provisions. Appellant’s absurdly literal reading of the MHRA directly contradicts the federal statute by requiring owners to act as if the two repealed statutes were still effective; an owner would have to choose between violating the federal statute or committing an unfair discriminatory act under Minnesota law.

Respondents do not argue that the Minnesota legislature could not have passed laws that explicitly protect Section 8 HCV-holders, precluding any preemptive effect of the HUD regulations, and effectively making owner participation in the program mandatory. But Appellant has not demonstrated any such legislative intent. The cases Appellant cites in support of the proposition that states may, if they choose, mandate Section 8 participation are inapposite in that those cases concern laws explicitly protecting Section 8 tenants. In *Rosario v. Diagonal Realty, LLC*, the court held that the Federal Section 8 law did not pre-empt the state anti-discrimination law, which explicitly

protected “tenants who receive, or are eligible to receive, Section 8 assistance.” 872 N.E.2d 860, 865 (N.Y. 2007). Similarly, in *Commission on Human Rights and Opportunities v. Sullivan Associates*, the court held that no preemption existed where the state statute “require[d] landlords to accept otherwise qualified tenants whose lawful source of income may include section 8 housing assistance.” 739 A.2d 238, 246 (Conn. 1999). In *Sullivan*, the holding that the legislature had specifically intended to make participation in Section 8 mandatory was based in large part upon the court’s conclusion that “the legislature was well aware of section 8 regulations when it considered the antidiscrimination statute” at issue. *Id.* at 250. Here, Appellant cannot conceivably show that the legislature had any actual knowledge of (as-yet nonexistent) Section 8 regulations when it passed the disputed MHRA language, and he has presented no evidence that the legislature’s subsequent failure to extend the MHRA to protect Section 8 tenants – despite numerous opportunities over a quarter-century to do so – should be construed as anything other than a clear expression of the legislature’s intent to preserve the voluntary nature of the program.

None of the cases cited by Appellant holds, or suggests, that a state anti-discrimination law passed before the passage of the Section 8 program (like Minnesota’s) could protect Section 8 tenants. Respondents also note that while other states are obviously free to pursue their own policy objectives, those objectives, and other state courts’ interpretations of their states’ laws, are obviously specific to those states and should have little or no bearing on this Court’s analysis.

In the present case, where the relevant Minnesota statute was passed before the Section 8 program existed, and has not since been amended, and where the MHRA, even after comprehensive legislative scrutiny and amendment, makes no mention of Section 8 (although the term is defined and discussed elsewhere in the statutory scheme), it strains credulity to assert, as Appellant does, that the Minnesota legislature intended, in adopting the public-assistance language of the MHRA, to protect Section 8 tenants and thus reject the owner-choice principle at the core of the Section 8 program.

Therefore, while it is true that nothing in the Section 8 program prevents a state from mandating participation, Appellant has fallen far short of demonstrating that the Minnesota legislature ever intended to do so here or took the affirmative, substantive, and policy-transforming steps necessary to foist participation in the Section 8 program on Minnesota's landlords. And in asking this Court to read such intent into a provision where none exists, Appellant disregards the important distinctions among the different branches of state government. As the Minnesota Supreme Court has observed, "[b]earing in mind that the obligation of the judiciary in construing legislation is to give meaning to words accorded by common experience and understanding, to go beyond the parameters of a legislative enactment would amount to an intrusion upon the policy-making function of the legislature. *Goins v. West Group*, 635 N.W.2d 717, 723 (Minn. 2001).

IV. APPELLANT'S CLAIMS BASED UPON HIS ERRONEOUS READING OF THE MHRA MUST FAIL

Appellant argues that the district court erred in granting Respondents summary judgment because Respondents' decision to stop participating from the Section 8

program is direct evidence of discrimination, establishing Respondents' liability as a matter of law or, in the alternative, because Appellant is entitled to summary judgment under a burden-shifting, circumstantial-evidence analysis. Both of Appellant's arguments are without merit.

A. Respondents Are Entitled to Summary Judgment Under a Direct-Evidence Analysis

Appellant argues first that because he has presented direct evidence of discrimination, he has demonstrated Respondents' liability as a matter of law. *See Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989). This argument has no merit. Direct evidence is evidence that establishes a "specific link between the [alleged] discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the [adverse] decision." *Schierhoff v. GlaxoSmithKline Consumer Healthcare, L.P.*, 444 F.3d 961, 965 (8th Cir. 2006). Appellant's direct-evidence argument is without merit.

First, as demonstrated above, Appellant's entire theory of liability is based on his erroneous interpretation of the MHRA whereby an owner's refusal to participate in the Section 8 program constitutes a discriminatory act as a matter of law. Appellant is not protected as a matter of law under the MHRA by virtue of his eligibility to participate in the Section 8 program. He does not attempt to show, as he must to meet his burden of proof, that his purported disparate treatment at Respondents' hands was motivated by discriminatory animus. "When a plaintiff alleges disparate treatment, "liability depends on whether the protected trait . . . actually motivated" the complained-of act. *Reeves v.*

Sanderson Plumbing Products, Inc., 530 U.S. 133, 141 (2000). Respondent's decision to discontinue participation in the program did not trigger the protections of the MHRA.

Second, even under a "direct evidence" analysis, Respondents would still be entitled, upon Appellant's showing of direct evidence, to demonstrate that they would have taken the same decision even absent the alleged discriminatory factors. *See Smith v. F.W. Morse & Co., Inc.*, 76 F.3d 413, 421 (1st Cir. 1996). Respondents proved, to the satisfaction of the district court, and as a matter of law, that they took the complained of action for reasons that had absolutely nothing to do with any alleged discriminatory factors or Appellant's alleged protected statuses.

B. Respondents Are Entitled to Summary Judgment Under A Circumstantial-Evidence Analysis

In the absence of direct evidence, Appellant may attempt to prove discrimination using circumstantial evidence under the familiar three-part burden-shifting test for discrimination claims established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and adopted in Minnesota in *Danz v. Jones*, 263 N.W.2d 395. Under the test, Appellant has the initial burden of proving a prima facie case of discrimination; if he does so, the burden shifts to Respondents to present evidence of some legitimate non-discriminatory reason for its actions; if Respondents meets this burden, Appellant then has the opportunity to show that Respondents' presumptively valid reasons are in fact a pretext obscuring discrimination. *Id.* at 398-99.

Appellant cannot even make a prima facie case of discrimination here. To establish a prima facie case of housing discrimination, Appellant must show (1) that he is

a member of a protected class; (2) that he sought and was qualified to rent the housing; (3) that he was rejected or suffered some adverse action because of his membership in a protected class; and (4) that the rental opportunity remained available to other renters. *Mitchell v. Shane*, 350 F.3d 39, 47 (2nd Cir. 2003). He has not shown that Section 8 participants are members of a protected class, and his attempt to read that inclusion into the legislative intent is contrary to the weight of relevant evidence and the canons of statutory interpretation. He has not shown that he was qualified to rent the apartment, because, following Respondents' decision to withdraw from the Section 8 program, tenants who participated in the program were no longer qualified to rent from Respondents. The disqualification precludes the possibility that Appellant was "rejected"; he was simply ineligible. As to Appellant's claim that he was quoted a higher rent because of his purported protected status, even if being quoted a rent that is \$25 more than the starting rate for a two-bedroom apartment could be considered an adverse action, Appellant can in no way show that Respondents' decision to discontinue participation in the Section 8 program was a pretext for intentional discrimination. Appellant can show no causal connection between the complained-of behavior and the alleged adverse action. And the rental opportunity did not remain open to any other similarly situated renters, that is, renters who wished to use Section 8 vouchers.

Even if Appellant could make a *prima facie* case, summary judgment for Respondents was appropriate here because Respondents had legitimate, nondiscriminatory reasons for choosing not to participate in the Section 8 program: the burdens of participation in the program. Some courts have held that the burdens imposed

by mere participation in Section 8 provide a legitimate business reason for electing not to participate in the program at all. In *Salute*, the court observed that subsidy programs, by that “it is easy to conclude that, for landlords who reject voluntary Section 8 participation, the contract with the federal government, the retention of counsel to make the Section 8 arrangements, the requirements for compliance, and the limitations on use (actual and potential), are “unreasonable costs,” an “undue hardship,” and a “substantial burden,” which are not required by the FHAA’s reasonable accommodation provision.” 136 F.3d at 293. And the Minnesota Department of Human Rights (“Department”) itself, through an Administrative Law Judge, has found that the requirements of complying with Section 8 are burdensome to landlords. App. 275; Exhibit Z, *Commissioner of the Minnesota Department of Human Rights v. High View North Apartments* (1979) (holding that an owner does not discriminate against a tenant based on her status with regard to public assistance when it refuses to accept a Section 8 voucher and that the burdens of compliance constitute a legitimate business reason for not participating in the program). The Department’s interpretation of the Act is entitled to great weight. See *Cummings v. Koehnen*, 556 N.W.2d 586, 589 (Minn. App. 1996). Here, the burdens that would be imposed upon Respondents by the Section 8 program are substantial and would require Respondents to alter the way they currently do business by giving up, among many other things (and without even considering the substantial bureaucratic and administrative burdens and expenses of participation), autonomy as to eviction and property-transfer decisions and privacy as to their business records.

Appellant cannot show even a *prima facie* case of discrimination under any theory of proof, and the district court properly granted Respondents summary judgment on the MHRA claims.⁴

C. Appellant's Disability-Discrimination Claim Is Without Merit

Appellant's disability-discrimination claim must also fail as a matter of law, because he is unable to make a *prima facie* case of discrimination. Appellant claims that Respondents violated his rights under Minn. Stat. § 363A.10, subd. 1(2), which provides that it is discriminatory to refuse "to make reasonable accommodations in rules, policies, practices, or services, when accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling." Appellant's argument is that because his purported disability restricts his earning ability, Respondents could reasonably accommodate his disability by continuing their participation in the Section 8 program. Appellant's argument on this issue is rife with inconsistencies; he cannot come close to making a *prima facie* case, and the district court properly granted Respondents summary judgment on this issue.

In order to make a *prima-facie* case, Appellant would need to show that (1) he is a

⁴ Although Appellant has not argued that he might have a claim under a disparate-impact theory, whereby the effect of a facially neutral decision was more harshly felt by Section 8-eligible tenants, Respondents note that the MHRA recognizes disparate-impact claims only in respect to employment discrimination. The disparate-impact theory is only available for employment-related claims. *Monson v. Rochester Athletic Club*, 759 N.W.2d 60, 67 (Minn. App. 2009) (holding that the disparate-impact theory is not available for claims arising under the MHRA's public-accommodation provision, Minn. Stat. § 363A.11, subd. 1(a)(1)).

member of a protected class and that (2) his requested accommodation is (3) linked to his disability-related needs, (4) necessary to afford him an equal opportunity to enjoy Section 8 benefits and (5) reasonably possible to implement. *Huberty v. Washington County Housing & Redevelopment Authority*, 374 F. Supp. 2d 768, 773 (D. Minn. 2005). If Appellant makes such a showing, the burden shifts to Respondents to demonstrate that the requested accommodation is unreasonable.

Appellant has not even met the threshold requirement by showing he is disabled. The chronology of Appellant's notification of his alleged disability is significant here: throughout his entire tenancy at Hopkins Plaza, Appellant never disclosed that he suffered from any condition that materially limits any major life activities, nor did he ever request any accommodation or modification related to any mental or physical condition or impairment. Appellant has never alleged that he was regarded as disabled by Respondents. It was only months after Respondents informed Appellant of their decision to no longer participate in Section 8 program, and in the context of the present litigation, that Appellant produced extremely limited medical records of a psychiatric condition that may, under certain circumstances, be considered a disability.

Nor can Appellant meet any of the other elements of the prima-facie case. His requested accommodation – Respondent's participation in the Section 8 program – is not at all linked to his disability-related needs. He can show no nexus between the purported disability and the requested accommodation, and no reason why the requested accommodation is medically necessary to accommodate the disability. He cites to no law in support of the proposition that monetary assistance is a reasonable accommodation for

a disability. As to the second element, Appellant cannot show that his disability prevents him from being able to pay his rent without a HCV. It may be that his earning ability is compromised by depression, but Appellant has offered no evidence of this critical causal element, which cannot be merely assumed.

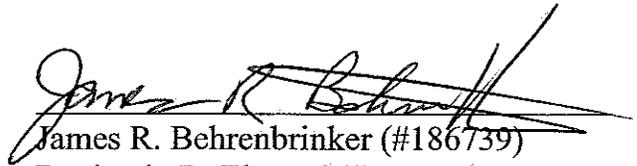
Finally, the requested accommodation is entirely unreasonable. Appellant is requesting that Respondents alter their entire rental policy and re-enter a burdensome and heavily-regulated administrative process solely for his benefit. This would obviously constitute a hardship on Respondents, and would justify the grant of summary judgment in their favor on this issue, even had Appellant been able to meet one, or more, of the other elements of a prima facie case. Appellant's disability claim must also fail as a matter of law because of the legislative intent, as reflected in statutory language and articulated in judicial opinions, that participation in the Section 8 program is voluntary and cannot be foisted upon an owner in the guise of a request for a disability accommodation.

RELIEF REQUESTED

For all the reasons discussed above, Respondents were entitled to summary judgment on all of Appellant's claims, and respectfully request that this Court affirm the judgment of the district court in all respects.

Dated: October 30, 2009

JAMES R. BEHRENBRINKER
Attorney at Law

A handwritten signature in black ink, appearing to read "James R. Behrenbrinker", is written over a horizontal line.

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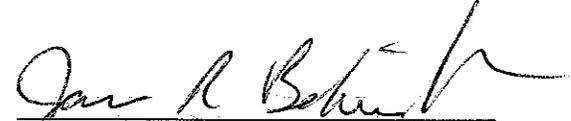
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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subdvs. 1 and 3. This brief was prepared using a proportional spaced font size of 13 pt. and contains 13,928 words. The word count is stated in reliance on Microsoft Office Word 2002, the word processing system used to prepare this brief.


James R. Behrenbrinker