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By Donna M. Airoldi

Kenneth Nelson thought he hit the jackpot when his housing lottery number was called for the new VIA 57 West development at 625 W. 57th St., where two-bedrooms range from $735 to $929 per month for those making between $25,200 and $43,150. The actor and single dad, who says he had applied to about 25 lotteries before landing this one, has been living in a one-bedroom in Harlem with his 12-year-old son — who gets the bedroom while Nelson sleeps on the couch in the living room.

He supplied Breaking Ground, the marketing agent for the building, with close to 75 pages of requested information: three years of tax returns after they had initially asked for one, a letter from his son's school, bank statements, a letter from his current landlord. Finally he had the interview.

"I thought it went well, but they said they needed one more piece of documentation — a letter from a former employer confirming that I no longer worked there," Nelson says.

After supplying it, he thought it was a done deal. Instead, he received a notice that he was disqualified for the unit because of his credit score. A letter stated it was 579, below the 600 minimum set for the building. But Nelson insists his score was at 640 and sent updated documents from Experian, TransUnion and Equifax. The document he shared with this reporter showed all three reports were above 600. He says the marketing agent told him they used On-Site, a renter screening report, for all applicants, and at the time they pulled his report, it was 579.

Nelson appealed and contacted his local politician, former Assemblyman Keith L. T. Wright, whose office told him that credit data can be two months behind.

"My score wasn't low," says Nelson. "This is very important to me. If they're disqualifying people based on inaccurate information, that's not fair."

Credit history is just one glitch that applicants face when seeking an affordable housing unit through the city's lottery. NYC's Department of Housing, Preservation and Development (HPD) and the Housing Development Corporation (HDC) cede oversight of the affordable housing lottery process to developers and third-party managers, who use inconsistent and unclear screening measures when selecting applicants for buildings — sometimes rejecting those who actually qualify for these high-demand apartments.

Applicants who work multiple jobs or have varying hours, such as flight attendants, people in the arts, bartenders, freelancers — often those most in need of affordable housing — have an especially difficult time getting approved. And the rules for applicants vary from building to building, depending on whether developers receive city or state tax credits or subsidies.

“Each [funding] program has its own set of requirements,” says Sarah Meier-Zimbler, manager of affordable housing initiatives for the Actors Fund, which runs an affordable housing education workshop three times a month for those in the performing arts or entertainment industry. The organization also owns two affordable housing buildings, one on the west side of Manhattan and one in downtown Brooklyn. “The city is really trying to standardize it as much as possible. Most frustrating is when a client gets one answer from one building and another from a different building.”

New Guidelines

To address multiple complaints about the confusing lottery selection procedure and lack of transparency in the process, on October 4 the city issued an updated Marketing Handbook, which sets the rules for the lotteries run through HPD and HDC. The updates are based on recommendations from the city’s Housing Ambassadors, a group of community-based service providers who help people prepare and apply for affordable housing, along with other stakeholders in the process, including applicants, developers and marketing agents — third-party companies or nonprofit organizations hired by developers to review applicants and “lease up” (fill) the units.

The changes were meant to make the policies more fair, transparent and effective in targeting those most in need, according to a city press release. Many of these changes were welcomed by both applicants and housing advocates, including eliminating home visits, making sure the interview location is accessible and provides interpretation services, lowering the asset cap to ensure people with means (and property outside of New York) aren’t taking advantage of the system, and standardizing and limiting the use of housing court and credit history.

For the latter, a marketing agent “may not reject an applicant based solely on a credit score,” and it may “choose to accept applicants with a credit score of 580 on a FICO scoring system without further review of their financial stability,” state the new guidelines. FICO is a publicly traded data analytics company that measures a consumer’s creditworthiness. A FICO score is based on credit reports — a person actually has several — and ranges from 300 to 850. It, and other credit scores, have long been cornerstones of the mortgage and housing market, and came under fire during the financial crisis.

This change in the rules would seem like good news for Nelson. But there’s a snag. The new marketing rules apply only to buildings that have received city assistance. VIA 57 West received state incentives, with rules that are more ambiguous.

“There is no set credit standard established by the state,” notes a Breaking Ground spokesperson, in an email. “Each owner sets it as part of their marketing plan which is reviewed and approved by the state. In some projects credit is pulled before [the] interview and only those who pass the check are interviewed; in other projects credit is pulled after the interview."

This baffles Nelson. "[Marketing agents] can do whatever they want. No one is regulating them," he says. "Why do the city and state have different rules?" He has vowed to fight on.

Income Calculations

One of the biggest areas that trips up applicants in the lottery process is their income calculation — and making sure it falls between the minimum and maximum allowed for the apartment they're applying for. This is supposed to be the main indicator of whether someone gets an affordable unit or not, says Monica Morante, of Housing Conservation Coordinators, a community service nonprofit that helps residents on the west side of Manhattan, particularly with preserving affordable housing. A few other reasons factor in, such as being disqualified if you own property within 100 miles of the city. Otherwise, income is the main criterium.

"The application is straight-forward, and if they meet the income guidelines, they should definitely be in because they've been called," Morante says. "If they don't [get an apartment], it's because their income is different than they claimed on the application. It could be because they're called a year later and things have changed."

That's when an applicant will likely be denied, but can possibly win on appeal by documenting how their income has changed, provided it falls within the building's earnings range.

But calculating income, particularly if an applicant is self-employed, works multiple jobs or has sporadic payments, can be anything but straight-forward. The city publishes an Applicant Income Guide to help individuals calculate their income on an annual basis. According to the guide, in general, for earnings from W-2s, gross income is used for calculation. If an applicant is self-employed and receives 1099s, then net income after business expenses and other deductions is calculated. There are no examples in the guide for when someone receives both.

This is when it starts to get tricky, especially if the person conducting the interview uses a different calculation method than the one the applicant used when applying. The screener's disposition could also play a role.

"I had some clients have lengthy interviews, others took two minutes," says Meier-Zimbler. "It depends on the person you get and if they are in a patient mood."

For Lauren Marcus and her husband, who live in Hell's Kitchen and are in the arts, they didn't even get a chance to explain their earning situation. She's an actress, and he performs and is a musical theater writer. They get by with more than 30 sources of income each year.

She took their average income over the previous five years, then calculated projected income for the coming year and it was near the same, so she used that figure. After applying to four lotteries, in October 2016 they were called for an apartment two blocks from their home. Prior to their interview, they were asked via email to supply documentation, so she sent in five years of income statements, even though only three were requested, thinking it would help explain their situation, along with projected income plus deductions for this year. The morning of their scheduled interview, she received a call from a woman at the marketing agent saying they were ineligible.

Marcus asked the woman to walk her through why they were declined, and she said it was because her husband's gross income was over the maximum allowed for a unit. Marcus corrected her and said they were both self-employed so net income should be considered, not gross, based on the guideline rules. Then the woman said they made too little money. Marcus said that she was supposed to take an average of the years and not just one year since they were self-employed.

"She went silent," Marcus says, then got a little defensive. "It went back and forth like this, with rules changing, and it felt like she didn't know what she was doing. At one point she said they didn't accept W-2s."

By the end of the call, the woman confirmed they were declined and cancelled their meeting, but said she would speak to her supervisor about another one. In the meantime, she said Marcus could appeal. Marcus contacted HPD to complain and learned she didn't need to send in the documentation ahead of the meeting, and that the marketing agent was not allowed to deny the interview since justifying their type of income situation "is too confusing to explain over the phone."

Marcus and her husband eventually received a rejection letter and an income chart where the marketing agent calculated her husband's income one way and Marcus' another, without taking any home office or business expenses into consideration, so the verdict was they made too much money.

"It just feels like they truly don't understand the life of an artist or working actor or writer," Marcus says. She filed an appeal — they have to be received within 10 business days of the date of the rejection — copying HPD.

Flight attendants also have a difficult time with income calculations. Kirk Jones, who began applying for housing in 2010, had just started working for Delta Air Lines when he applied for an apartment at 60 Water Street in Dumbo, Brooklyn. He based his pay on what he thought he would earn for the year, with a stipend and lower hourly wage for the first several months while he was in training and on probation, and then a regular hourly wage later in the year.

But when he was called in for his interview in early 2015 by the marketing agent, listed as Phipps Houses, they asked for his last six pay stubs. He says that rather than look at his tax return, they looked at the last two months, when he had started making more money, and did their calculations based only on those. He says they also included his per diems — which are meant to be reimbursements to cover expenses on layovers and not count toward income. He says he explained all that to the marketing agent and had Delta's human resources department show it was a reimbursement, to no avail. The agent said he earned too much money to qualify.

"I don't have an actual salary. My pay style is different than most," says Jones. "I'm barely making anything. Whatever formula they have is not reflective of my actual year. For them to say I was making more, I was shocked."

Jones was called again, in October, for an apartment at P.S. 186, an affordable housing redevelopment of a former school at 526 W. 146th St., where the rent for a one-bedroom starts at $547. When he applied, he put in for a two-person household, but by the time he was called, he was single again. He went to the interview at marketing agent Lemle & Wolff, and they immediately disqualified him because his family size had changed.

For Tricia Rivera, who has lived her entire life in Greenwich Village — and whose family in the city dates back to her grandmother being born on Sullivan Street in 1907 — she was declined from the new building at 70 Charlton St., where studios start at $833 for annual earnings of up to $38,100, also because the building's marketing agent, Breaking Ground, said she made too much money.

She was laid off from Nielsen Entertainment in September 2015, and her interview was nearly a year after she had lost her job. Yet, the agent used her 2015 taxes, which included her former full-time job plus about $6,000 in freelance work, to project her 2016 income and determined that she exceeded the maximum cap, even though she freelanced and worked temp jobs the beginning of the year, is currently on unemployment and won't be making nearly as much money this year.

"They told me that if I had not taken the freelance work, I would have been fine," says Rivera, who argues that because she worked freelance, they should look at her net income, after deductions, not gross income. Accounting for her business deductions and standard deduction, she says she falls within the income range. And one can see why she would think that: On page four of the income guide, it says to calculate net income by subtracting "business expenses and any other deductions." Rivera took this to mean her standard deduction. But what can be unclear is that those deductions do not include standard deductions, only business and "other deductions," which aren't explained.

Also, even though Rivera's income situation had changed for the negative since she applied, per page 40 of the city's Marketing Handbook, marketing agents are supposed to review three types of income verification: the latest tax return, an applicant's six most recent consecutive pay stubs and third-party verification directly from an employer. The agent then is to compare these three and “the highest of these amounts will be the employment income for the household member.”

It might not seem fair, especially for those with periodic work or when someone who has been laid off or downsized is in even more need of affordable housing, but those are the rules. Rivera appealed, and complained to her local councilman, Corey Johnson’s office, who contacted Breaking Ground and HPD, but the response came back as another rejection.

Meier-Zimbler says the developers and their agents are very cautious — because if they let in someone who isn’t eligible, they risk losing all their tax credits — and people have been denied for being over or under by even just $1. “There’s not any wiggle room here, and it happens all the time,” she says.

To try to help explain how income is calculated for individuals with both W-2 and 1099 earnings, Breaking Ground provided the following examples, which show how two people each earning $40,000 can show different qualification incomes:

Samples for Mixed Sources of Income

Applicant 1

W-2 earnings	$30,000
1099 earnings	$10,000
Self-employment expenses	($12,000)
Net self-employment earnings - cannot be less than $0 for purposes of affordable housing qualifications	$0
Total Income for affordable housing qualification	$30,000

Applicant 2

W-2 earnings	$10,000
1099 earnings	$30,000
Self-employment expenses	($12,000)

Net self-employment earnings - cannot be less than $0 for purposes of affordable housing qualifications	$18,000
Total Income for affordable housing qualification	$28,000

Appeals and Transparency

Lauren Marcus received word in early December on her appeal that the marketing agent made a mistake and would deduct the home-office expenses, but they still would not accept her deductions as a self-employed artist. After this second rejection, she filed an appeal to HPD — which has to be made within five business days of the second rejection letter.

“I genuinely appreciate [their] taking the time to re-assess everything, and it makes me feel not so crazy in this whole process. And like maybe this could actually happen,” Marcus wrote in an email.

Instead, in early January, she received a form letter from HPD that they were again rejected, and that the rejection was final. “They didn’t address our actual concern at all, and cited rules from the handbook we’ve already complied with,” she wrote, adding that the letter had zero to do with the actual concern of the marketing agent not following the handbook rules to calculate her net income. She’s now considering legal action.

Winning an appeal through HPD is a challenge. “It’s not very often that we disagree with the marketing agents’ determinations,” wrote HPD spokeswoman Juliet Pierre-Antoine in an email. “If it does happen, it’s likely because the applicant submits additional documentation or information to us that they did not provide during the interview process.”

The new rules in October were supposed to make the appeal process more transparent, but many people interviewed did not fully understand the procedures, or even know that they could appeal to HPD or HDC.

“The de Blasio administration did a good job making changes in the fall, but they didn’t identify anything on the appeal process other than a lack of transparency. They didn’t say what was going to change,” says Justin La Mort, supervising attorney with MFY Legal Services, which represents tenants and works toward preserving low-income housing. “There’s a short turnaround time and no context of what you can appeal about and why. The only way you know is a letter, but there's no oversight on whether they send the letter or not."

According to the marketing guidelines, after the interview, it can take anywhere from two to 10 months for a response, "so you can be sitting for nearly a year and not knowing and be denied only if you received the letter."

La Mort says most people don't know they can go to HPD or whatever government agency is overseeing the development. "But the vast majority won't even find that information unless they're working with a community organization," like HCC.

And that's if they've been lucky enough to have been selected for an interview. Anita McLoyd of Harlem says she has applied to nearly 200 lotteries over the last four or so years and has never once gotten a response. "There's no feedback, they don't let you know unless you've been accepted," she says, adding that a couple of her applications in Housing Connect, the online application for the lottery, still show as "pending," but when she called one of the buildings, she was told more than 30,000 people had applied for just two apartments.

Inconsistencies and Discrimination

In addition to inconsistent income determination, there are different rules depending on a building's funding — and not just between whether it's city or state funded. Full-time students as sole occupants, for example, are not eligible for buildings that are financed with a Low-Income Housing Tax Credit (LIHTC) or tax-exempt bonds, however, they are eligible for buildings that have only 421-a tax exemptions and/or are participating in the city's Inclusionary Housing program, Breaking Ground said through a spokeswoman.

Same for family size. There are supposed to be allowances for a change in family size from the time of application to the interview if there's been a birth or a death in the family, at least for city-funded buildings. But that isn't always the case. Julie Schwietert Collazo says she was called for an interview for an apartment and mentioned that she was seven months pregnant. The person on the phone told her she no longer qualified because her household size would be changing in two months.

HCC's Morante says she often accompanies her clients to their interviews, especially appeals, and she notices they're treated better than when they go on their own, based on her observations and what clients tell her about their experiences. She's had many successes getting clients into affordable housing, but she's currently struggling with a new 80/20 building in Harlem — where 80 percent of the units are market rate and 20 percent are affordable — and her clients had a birth in the family. While that should be acceptable, they also happen to be Muslim, she says. "I've been fighting this situation for a while now."

La Mort admitted his firm gets reports of discrimination, but because of lack of transparency, it's very hard to prove. "A couple months ago I had a person who was told they made too much income, but they didn't make enough to pay the rent in the apartment," he says. "How do you appeal that decision?"

He also referenced a lawsuit waged by Craig Gurian, founder of the Anti-Discrimination Center, against the community preferences given during initial leasing. Preferences and set-asides for affordable units are categories that must be processed in a certain order: people with disabilities (5 percent for mobility, 2 percent vision/hearing), community board residents (often 50 percent of affordable units) and New York City municipal employees (often 5 percent). Once these are met, or it's shown that there aren't enough applicants to fill them, then the marketing agent can process people from the general pool of New York residents, followed by non-residents.

Gurian's suit, filed on behalf of three African-American New Yorkers, claims that the community board preferences help the dominant racial or ethnic group in the community while hurting those groups who are underrepresented in the community district. The developments in the suit are in community districts where "whites are overrepresented and where African-Americans are underrepresented," according to Gurian's website. "Eliminating the outsider-restriction policy would allow all income-eligible New Yorkers to compete on a level playing field."

There's also potential age bias, as reported by DNAinfo New York in November. According to data obtained through a FOIL request, the local news site found that "the lion's share of the affordable apartments are going to singles ages 25 through 34," while only 4 percent were 62 or older. Of the available units, 293 were studios, 605 were one-bedrooms, 516 were two-bedrooms, and 56 had three or more bedrooms. The racial make-up, however, showed more diversity, with 36 percent of the units going to Hispanic applicants and 27 percent to African-Americans.

Lack of Oversight and Indifference

Another consistent complaint from applicants as well as MFY's La Mort is that there doesn't seem to be any oversight of the process.

Based on the lottery buildings reviewed, developers receive at least one type of incentive, if not more, in order to entice them to include affordable housing units in their projects. Because of that, and since the city is in charge of the random assigning of the lottery numbers and the Housing Connect system, it's safe to assume that the city is the overseer of who gets these below-market units.

On paper that is the case. The marketing agents who screen applicants are supposed to submit a "lottery log update" at least biweekly to HPD and HDC, depending on which agency is hosting the lottery for a development, to ensure that applicants are being processed in proper order, according to page 24 of the city's Marketing Handbook. The documents from each applicant screened, approved and offered a lease are also supposed to be reviewed and approved by HPD or HDC prior to the signing of the lease (see page 57). But it's unclear the review is happening.

According to HPD's Pierre-Antoine, the agency doesn't follow-up with the developers and marketing agents. When asked how the city knows these marketing agents are correctly doing their jobs, she says, "If [an applicant] feels they were denied unreasonably, they can contact us, then we would investigate." As for any oversight system to adhere to the plan, Pierre-Antoine says "they sign contracts with us."

The Actors Fund's Meier-Zimbler was surprised to hear this, because she said she's had clients who have had to go through the stress of requalifying their income after HPD took too long to approve the selected applicants. For certain incentives, such as the LIHTC program, the rules stipulate that income documentation must be from within 120 days of the move-in date. If more than 120 days pass from the time income is verified to the lease offering, the applicant's income needs to be re-verified before they can sign a lease. This can be a big problem for people whose work is inconsistent or seasonal, and they can qualify initially and then be rejected at the last minute.

La Mort recommends a letter be sent to both the applicant, explicitly stating why they're being denied, and to the government agency to make sure there's compliance. He also wants the appeal process to be clearer and to provide for more time.

"Ten business days for an affordable apartment is simply not enough time," he says. "It should be 30 days. There could be due process issues. Also the agency involved needs to take a more active role in why someone is being denied and review that data and see if there are trends."

Another complaint is being treated rudely by the developers or marketing agents.

"There was a strange amount of hostility the minute I sat down, like their job was to prove me to be a liar," said Karis Danish, an actress who was called for an apartment at 70 Charlton St., the same building where Rivera was denied. She, too, was initially declined, because her name was on a bank account that belonged to her father. Her appeal with proof showing she never accessed that account was accepted. She's still waiting for the next step.

For Jones, who was rejected from the Water Street apartments, he wanted to hire an attorney, but couldn't afford to. For the most recent rejection, at P.S. 186, he "felt a little dismissed and not all the way informed. They were just curt and to the point."

Nelson, however, has not given up. He contacted Manhattan Borough President Gail Brewer, who wrote a letter to Breaking Ground on Nov. 23 asking them to reconsider their decision. As of the end of the year, a spokesperson for Brewer said they had not received a response.

“I do feel discriminated against to be honest,” he says. “I do feel they just look at what they want.” Referring to his outdated credit score, “How do you disqualify someone based on saying it’s fact when it’s not fact?”

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