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## Important Mass. SJC decision interpreting fed/state housing and subsidy discrimination law

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Krokidas &amp; Bluestein

***This decision is important for several reasons. Under Massachusetts law, it clarifies the requirements of the state subsidy discrimination statute for owners choosing among subsidy programs. Under both federal and state law, it assists owners contemplating terminating project-based Section 8 contracts. More broadly, it is one of the first to apply the standards delineated in the Inclusive Communities decision. By reinforcing that decision's rigorous requirements placed on plaintiffs, Burbank will help owners defend disparate impact housing discrimination claims. Rental housing owners and their counsel should be mindful of these important aspects of the Burbank decision when facing subsidy or housing discrimination issues.***

The Massachusetts Supreme Judicial Court recently issued a decision of national importance rejecting a housing and subsidy discrimination lawsuit brought by tenants against the owners of their apartment complex - - Burbank Apartments Tenant Association v. Kargman, No. SJC-11872 (April 13, 2016), in which the owners were represented by Krokidas & Bluestein of Boston. The tenants claimed that the owners violated state and federal law when they did not renew the development's federal project-based Section 8 subsidies following payoff of their 40-year mortgage, and instead elected to provide subsidies to qualified tenants under HUD's tenant-based Enhanced Voucher subsidy program, all as permitted by federal and state law.

In rejecting the tenants' claims, the SJC ruled that Massachusetts subsidy discrimination law requires that residential rental property owners not discriminate against public assistance recipients in general, not that they must provide the best,

or any particular, form of rental assistance. Thus, the fact that the owners chose to provide Enhanced Vouchers rather than project-based assistance was not actionable under the subsidy discrimination statute.

Turning to the tenants' argument that the owners' decision had a disparate impact on protected classes, the SJC ruled that, although such a claim is cognizable under federal and state housing discrimination law, even where the owners' actions satisfied federal and state law and contracts, the tenants' disparate impact claims were unsupported and speculative under the recent U.S. Supreme Court decision in Texas Department of Housing and Community Affairs

v. The Inclusive Communities Project, Inc., 135 S.Ct. 2507 (2015). Because the Burbank owners had obtained Enhanced Vouchers for all qualified existing tenants, and had even obtained Enhanced Vouchers for previously unsubsidized tenants, the Court held that none of the owners' alleged actions justified the imposition of disparate impact discrimination liability. As a result, the SJC upheld the dismissal of all claims against the owners.

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