UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2537

WILLIAM DEW,

Appellant

v.

S. COLUMBIA TERRACE, LLC; THE RIVER CLUB

(D.C. Civ. No. 2:20-cv-00344)

ORDER

Present: AMBRO, PORTER and SCIRICA, Circuit Judges

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and no judge who concurred in the decision having asked for rehearing, the petition for rehearing by the panel is denied.

BY THE COURT,

s/ David J. Porter
Circuit Judge

Dated: February 14, 2022
CJG/cc: William Dew

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-2537

WILLIAM DEW,

Appellant

v.

S. COLUMBIA TERRACE, LLC; THE RIVER CLUB

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. Civil Action No. 2:20-cv-00344)
District Judge: Honorable Susan D. Wigenton

Submitted Pursuant to Third Circuit LAR 34.1(a)
April 23, 2021
Before: AMBRO, PORTER and SCIRICA, Circuit Judges

(Opinion filed: May 3, 2021)

OPINION*

PER CURIAM

Pro se appellant William Dew appeals the District Court's dismissal of his complaint, which raised claims under the Fair Housing Act ("FHA"), 42 U.S.C. § 3601,

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

et seq. For the reasons that follow, we will affirm the District Court's judgment.

I.

In January 2020, Dew filed a complaint in the District Court against South Columbia Terrace, LLC ("SCT"), seeking intervention in a completed state court eviction matter and bringing an FHA claim. The District Court granted Dew's application to proceed in forma pauperis, screened his complaint, and dismissed it with leave to amend. Dew filed a letter with exhibits and an amended complaint, in which he dropped his request for intervention in the state court matter but continued to pursue an FHA claim against SCT. Dew maintained that in 2015, SCT purchased the building in which Dew had been renting an apartment. In 2019, Dew was evicted from his apartment for non-payment of rent after a judgment of possession was entered against him in state court. Dew alleged that SCT discriminated against him based on his source of income and because "his race (Black) [was] also a factor in [SCT's] adverse action." See Second Am. Compl. at ECF p. 8. He also alleged that SCT had not rented to Black or Hispanic tenants since purchasing the building in 2015. The District Court dismissed Dew's amended complaint, again without prejudice and with leave to amend.

Dew then filed a second amended complaint, the operative complaint here. He added a new defendant, the River Club, and alleged that when he was searching for housing in November 2019, the River Club's website stated that it did not accept Section 8 housing vouchers, which he alleged to be discriminatory. Dew did not add new allegations against SCT. In an order, the District Court dismissed Dew's second amended complaint with prejudice.

Dew filed a motion for reconsideration, arguing that a new law was passed in New Jersey several days after he filed his initial complaint and that SCT should have accepted his subsidized housing voucher. He also claimed he could show discrimination under a disparate impact theory, attaching a document with the names of the tenants in his rental building in 2015. He maintained that many tenants had moved out under unspecified mysterious circumstances and that all of the new tenants in the building were white, which Dew argued was not representative of the surrounding community. The District Court denied his motion. Dew timely appealed both the dismissal of his complaint and the denial of his motion for reconsideration.[1]

II.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the District Court's dismissal of Dew's claims. See Fowler v. UPMC Shadyside, 578 F.3d 203, 206 (3d Cir. 2009). Dismissal is appropriate "if, accepting all well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the plaintiff, a court finds that [the] plaintiff's claims lack facial plausibility." Warren Gen. Hosp. v. Amgen Inc., 643 F.3d 77, 84 (3d Cir. 2011). We review the denial of a motion for reconsideration for abuse of discretion. See Max's

[1] Because the District Court's dismissal order contained the reasoning for its disposition, it did not comply with the separate judgment rule set forth in Federal Rule of Civil Procedure 58(a). See Witasick v. Minn. Mut. Life Ins. Co., 803 F.3d 184, 187 (3d Cir. 2015) (explaining that an order must "at least substantially omit" reasoning to be considered a separate document) (citation omitted). Thus, the District Court's judgment was not entered until 150 days after the order was entered on the docket, and Dew's notice of appeal was timely filed as to both the dismissal order and the order denying reconsideration. See Fed. R. App. P. 4(a)(1)(A); Fed. R. Civ. P. 58(c)(2)(B).

Seafood Café ex rel. Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 673 (3d Cir. 1999).

III.

We agree with the District Court's dismissal of Dew's complaint. For Dew's disparate treatment claim under the FHA against SCT, Dew made no specific factual allegations in any of his three complaints to explain why he believed that SCT had discriminated against him based on his race, despite the District Court's repeated recitations of the relevant standards. See Cmty. Servs., Inc. v. Wind Gap Mun. Auth., 421 F.3d 170, 177 (3d Cir. 2005).

For his disparate impact claim against SCT, Dew's bare allegation that SCT had not rented to new Black or Hispanic tenants since purchasing the building in 2015 is not sufficient to state a claim of FHA discrimination, as "a disparate-impact claim that relies on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity." See Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc., 576 U.S. 519, 542 (2015). As the District Court explained, Dew's complaints included no allegations that described if any Black or Hispanic individuals applied to rent an apartment in his former building after 2015, as opposed to individuals from other racial groups, and, if their applications were denied, how that may have been due to any policy of SCT's.

Dew's claim against the River Club also fails. To the extent that Dew sought to bring a disparate treatment claim against the River Club, his sole allegation of discrimination was that the River Club did not accept subsidized housing vouchers, based on a statement from the organization's website. However, Dew has not explained in his

complaint how he could maintain a federal discrimination claim based on his source of income. To the extent that Dew's brief allegations can be construed to allege a disparate impact claim, as explained above, plaintiffs seeking to bring such FHA claims must allege that a defendant's policy has a disparate impact on a protected class. Dew made no allegations in his complaint that the River Club's policy had a disparate impact on any group of people and cannot state a claim of FHA discrimination on his bare allegations.[2] See Inclusive Cmtys, 576 U.S. at 543. The District Court did not abuse its discretion in denying Dew further leave to amend his complaint where he had previously been given several opportunities to clarify his allegations. See Grayson v. Mayview State Hosp., 293 F.3d 103, 108 (3d Cir. 2002).

The District Court also did not abuse its discretion in denying Dew's motion for reconsideration, which was not based on a proper ground for reconsideration, such as an intervening change in law, newly discovered evidence, or "the need to correct a clear error of law or fact or to prevent manifest injustice." See Max's Seafood Café, 176 F.3d at 677. Because all of the factual allegations in Dew's motion for reconsideration, some of which were drawn from publicly accessible websites, were available at the time he filed his amended and second amended complaints, and he cited no new federal law, the District Court properly concluded that Dew did not rely on new evidence or new law in

[2] Dew argues in his appellate brief that an investigator who was looking into housing discrimination at his former building failed to adequately investigate his claim and that the investigation was flawed. See Appellant's Br. at p. 1-6. He argues that a proper investigation could reveal the facts he needs to state a claim of discrimination. However, because Dew has not challenged the District Court's reasoning based on the facts he has alleged, these arguments do not aid his appeal.

seeking reconsideration.[3] See Howard Hess Dental Labs. Inc. v. Dentsply Int'l, Inc., 602 F.3d 237, 252 (3d Cir. 2010) ("[N]ew evidence in [the context of a motion for reconsideration] means evidence that a party could not earlier submit to the court because that evidence was not previously available.").

Accordingly, we will affirm the judgment of the District Court

[3] We understand Dew to be alleging only federal discrimination claims. Even if we were to liberally construe Dew's allegations as seeking relief under state law, because he cannot state a federal claim, we would not consider such a claim. See 28 U.S.C. § 1367(a); Kach v. Hose, 589 F.3d 626, 650 (3d Cir. 2009).

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WILLIAM DEW, Plaintiff, v. S COLUMBIA TERRACE, LLC, Defendant.	Civil Action No. 20-344 (SDW)(LDW) **ORDER** March 2, 2020

THIS MATTER having come before this Court upon *pro se* Plaintiff William Dew's ("Plaintiff") Amended Complaint against S Columbia Terrace, LLC ("Defendant") (D.E. 7); and

WHEREAS on January 23, 2020, this Court dismissed Plaintiff's Complaint (D.E. 1), allowing Plaintiff thirty (30) days to file an amended complaint (D.E. 5), and Plaintiff filed both a letter attaching several documents to supplement his Complaint on February 10, 2020 (D.E. 6) and then the instant Amended Complaint on February 21, 2020 (D.E. 7); and

WHEREAS *pro se* complaints, "however inartfully pleaded, are . . . [held] to less stringent standards than formal pleadings drafted by lawyers[.]" *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, "even 'a pro se complaint must state a plausible claim for relief.'" *Yoder v. Wells Fargo Bank, N.A.*, 566 F. App'x 138, 141 (3d Cir. 2014) (quoting *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013)); and

WHEREAS Plaintiff's additional filings do not change this Court's decision to dismiss Plaintiff's claim seeking to enjoin or vacate a state court's eviction ruling under the *Rooker-Feldman* doctrine (*see* D.E. 5 at 2);[1] and

[1] Plaintiff anyway appears to no longer seek such relief. (*See* D.E. 7 at 4.)

WHEREAS Plaintiff's Fair Housing Act ("FHA") claim[2] is apparently based on 42 U.S.C. § 3604(a)-(b), alleging that Defendant (his landlord) effectively refused to allow Plaintiff to renew his lease due to his race (African American)[3] and that Defendant "has not rented to any new African-Americans or Hispanic person[s] since [Defendant] purchased the building" in 2015 (D.E. 1-1 at 5-6) and, as relief, seeks damages and for this Court to "order[] the defendant to rent apartment[s] to Black and Hispanic people [and] accept state and federal rental assistance" (D.E. 7 at 4)[4]; and

WHEREAS 42 U.S.C. § 3604(a)-(b) makes it unlawful "[t]o refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling" or "[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith," based on a person's "race, color, religion, sex, familial status, or national origin," and may be "violated by either intentional discrimination or if a practice has a disparate impact on a protected class," *Torres v. Franklin Twp.*, Civ. No. 09-6282, 2011 WL 6779596, at *2 (D.N.J. Dec. 22, 2011) (citing *Cmty. Serv., Inc. v. Wind Gap Mun. Auth.*, 421 F.3d 170, 176 (3d Cir.2005)); and

WHEREAS the Amended Complaint lacks facts alleging discriminatory intent, only alleging, in conclusory fashion, Plaintiff's belief that Defendant has discriminated against him

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[2] Plaintiff's claim does not appear to be precluded by res judicata, as Plaintiff's prior eviction litigation appears to have been before a court of limited jurisdiction, and Plaintiff was thus unable to substantively raise discrimination claims against Defendant in that court. (*See* D.E. 6-1 at 1.)

[3] Specifically, Plaintiff alleges that Defendant refused to provide a government agency information, including a new lease, which would allow Plaintiff to receive government rental assistance. (D.E. 1-1 at 4-6.)

[4] This Court notes that 42 U.S.C. § 3604(a)-(b) does not make it unlawful to discriminate solely based on a person's lawful source of income. *Cf. Short v. Manhattan Apartments, Inc.*, 916 F. Supp. 2d 375, 392-94 (S.D.N.Y. 2012) (noting source of income is not covered under 42 U.S.C. § 3604(d)-(f) and is not a protected class under the FHA). If the refusal to accept such source of income is a manifestation of racial discrimination, it may be actionable, however. *See id.*

ORDERED that the Amended Complaint (D.E. 7) is dismissed without prejudice. Plaintiff shall have (30) days to file a Second Amended Complaint giving further detail substantiating his claims;

SO ORDERED.

/s/ Susan D. Wigenton
United States District Judge

Orig: Clerk
cc: Parties
Leda D. Wettre, U.S.M.J.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WILLIAM DEW, Plaintiff, v. S COLUMBIA TERRACE, LLC, and THE RIVER CLUB, Defendant.	Civil Action No. 20-344 (SDW)(LDW) **ORDER** April 8, 2020

THIS MATTER having come before this Court upon *pro se* Plaintiff William Dew's ("Plaintiff") Second Amended Complaint against S Columbia Terrace, LLC and the River Club (collectively, "Defendants") (D.E. 9); and

WHEREAS on February 21, 2020, Plaintiff filed the Amended Complaint (D.E. 7), which this Court dismissed on March 2, 2020, and allowed Plaintiff thirty (30) days to amend his complaint ("March Order"). (D.E. 8.) Plaintiff then filed the Second Amended Complaint on April 1, 2020 (D.E. 9); and

WHEREAS *pro se* complaints, "however inartfully pleaded, are . . . [held] to less stringent standards than formal pleadings drafted by lawyers[.]" *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, "even 'a pro se complaint must state a plausible claim for relief.'" *Yoder v. Wells Fargo Bank, N.A.*, 566 F. App'x 138, 141 (3d Cir. 2014) (quoting *Walker v. Schult*, 717 F.3d 119, 124 (2d Cir. 2013)); and

WHEREAS this Court dismissed the Amended Complaint for failing to state a claim upon which relief can be granted; specifically, Plaintiff's Fair Housing Act ("FHA") claim,

pursuant to 42 U.S.C. § 3604(a)-(b), lacked facts alleging discriminatory intent or disparate impact based on Plaintiff's race (D.E. 8 at 2-3); and

WHEREAS the Second Amended Complaint adds no new and relevant facts which may support Plaintiff's FHA claim, only adding allegations that a new defendant, the River Club, does "not accept Section 8 vouchers" (D.E. 9 at 3);[1] and

WHEREAS the Second Amended Complaint, therefore, similarly lacks factual allegations necessary to set forth a claim upon which relief can be granted. *See* Fed. R. Civ. P. 8(a)(2) (providing that an adequate complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief"); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (stating that although Rule 8 does not require detailed factual allegations, "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation"); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (explaining that to survive a Rule 12(b)(6) motion to dismiss, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level"); and

IT IS, on this 8th day of April, 2020,

ORDERED that the Second Amended Complaint (D.E. 9) is dismissed with prejudice;

SO ORDERED.

/s/ Susan D. Wigenton
United States District Judge

Orig: Clerk
cc: Parties
Leda D. Wettre, U.S.M.J.

[1] As noted in the March Order, 42 U.S.C. § 3604(a)-(b) does not make it unlawful to discriminate solely based on a person's lawful source of income. (*See* D.E. 8 at 2 n. 4.) To the extent Plaintiff seeks to make a claim under a state law which makes discrimination based on lawful source of income unlawful, this Court would lack subject matter jurisdiction over such claim.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WILLIAM DEW, Plaintiff, v. S COLUMBIA TERRACE, LLC, and THE RIVER CLUB, Defendant.	Civil Action No. 20-344 (SDW)(LDW) **ORDER** July 15, 2020

THIS MATTER having come before this Court upon *pro se* Plaintiff William Dew's ("Plaintiff" or "Dew") Motion for Reconsideration (D.E. 11, "Motion"), requesting reconsideration of this Court's April 8, 2020 Order (D.E. 10, "April 8 Order") which dismissed Plaintiff's Second Amended Complaint ("SAC") against Defendants S. Columbia Terrace, LLC ("S. Columbia") and The River Club (collectively, "Defendants"), filed on April 1, 2020 (D.E. 9);

WHEREAS this Court dismissed the SAC with prejudice because Plaintiff failed to make sufficient factual allegations supporting his Fair Housing Act, 42 U.S.C. § 3604(a)-(b) ("FHA"), claim in any of his three complaints (*see* D.E. 1, 7, 9); and

WHEREAS a party moving for reconsideration must file its motion within fourteen days "after the entry of the order or judgment on the original motion" and set "forth concisely the matter or controlling decisions which the party believes the . . . Judge has overlooked." L. Civ. R. 7.1(i).[1] A motion for reconsideration is "an extremely limited procedural vehicle," *Sch. Specialty, Inc. v.*

[1] Plaintiff filed his Motion on May 19, 2020, over fourteen days after the April 8 Order, however this Court will consider it in light of Standing Order 2020-04, dated March 24, 2020, which extended deadlines due to the COVID-19 pandemic.

Ferrentino, Civ. No. 14-4507, 2015 WL 4602995 at *2 (D.N.J. July 30, 2015) (internal citations omitted), which is to be granted "sparingly." *A.K. Stamping Co., Inc. v. Instrument Specialties Co., Inc.*, 106 F. Supp. 2d 627, 662 (D.N.J. 2000). Motions to reconsider are only proper where the moving party shows "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [reached its initial decision]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *U.S. ex rel. Schumann v. Astrazeneca Pharm. L.P.*, 769 F.3d 837, 848-49 (3d Cir. 2014) (quoting *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999)). Mere disagreement with a court's decision is not an appropriate basis upon which to bring a motion for reconsideration as such disagreement should "be raised through the appellate process." *Smith v. Manasquan Bank*, 2018 WL 2002801, Civ. No. 18-48, at *1 (D.N.J. Apr. 30, 2018) (citing *U.S. v. Compaction Sys. Corp.*, 88 F. Supp. 2d 339, 345 (D.N.J. 1999)); and

WHEREAS Plaintiff argues this Court should consider "new evidence" supporting his FHA claim. (D.E. 11 at 3.) Specifically, he states that on April 9, 2020, a housing investigator, Adriana Tovar ("Tovar") contacted him and told him 9 Columbia Terraces's tenants were 97% racially diverse in 2015, but by 2020, were 97% Caucasian, and attaches documents showing the building's tenants in 2015 and Edgewater, New Jersey's demographics (*id.* at 3, 8-10);[2] and

WHEREAS "'new evidence,' for reconsideration purposes, does not refer to evidence that a party obtains or submits to the court after an adverse ruling. Rather, new evidence in this context means evidence that a party could not earlier submit to the court because that evidence was not

[2] Plaintiff also argues there is "New Law" this Court should consider and renews his argument that S. Columbia discriminated based on his source of income. (*See* D.E. 11 at 1-3.) This state law was enacted on January 13, 2020, months before the filing of the SAC (*see id.* at 1) and is not "new" for purposes of a motion for reconsideration. Even considering this, for the same reasons listed in the April 8 Order, Plaintiff's claim fails. (*See* D.E. 10 at 2 n. 1.)

/s/ Susan D. Wigenton
United States District Judge

Orig: Clerk
cc: Parties
Leda D. Wettre, U.S.M.J.