IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

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MIRIAM BRIGGS-MUHAMMAD,

Plaintiff,

v.

BELVERLY LEWIS, *et al*.,

Defendants.

OPINION AND ORDER

13-cv-639-wmc

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Plaintiff Miriam Briggs-Muhammad filed a proposed civil action, alleging that one of the defendants threatened to terminate her federally-funded housing voucher in violation of her civil rights. On December 20, 2013, the court denied plaintiff's request for leave to proceed and dismissed the proposed complaint without prejudice after concluding that she failed to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2). Plaintiff has now filed an amended complaint. (Dkt. # 5). In addressing any pleading filed by a *pro se* litigant, the court must read the allegations generously, reviewing them under "less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 521 (1972). Even under this lenient standard, plaintiff still fails to overcome the deficiencies identified in the original complaint. Therefore, this case will be dismissed for reasons set forth briefly below.

## ALLEGATIONS OF FACT

The facts underlying this case have been set forth previously and will not be repeated here. (Dkt. # 4). It is sufficient to note that plaintiff Miriam-Briggs-Muhammad has clarified somewhat her original allegations in this case, which concern

the public-housing benefits that she currently receives. In particular, plaintiff receives assistance through the "Section 8 Voucher" program for lower-income tenants living in privately-owned rental units.[1] The only individual defendant identified by name in the complaint, Belverly Lewis, works for the City of Madison Community Development Authority, which oversees the local Section 8 program.

On August 30, 2013, Lewis reportedly threatened to terminate plaintiff's Section 8 housing voucher because plaintiff had filed a complaint against her in "both state and federal court." Lewis then made disparaging comments about plaintiff, including a racial epithet. Plaintiff contends that Lewis's threats and derogatory remarks violated her rights under the First and Fourteenth Amendment to the United States Constitution. She requests $10,000 in compensatory damages, $25,000 in consequential damages, and $50,000 in punitive damages from Lewis pursuant to 42 U.S.C. §§ 1983, 1985 and 1986.

## OPINION

A complaint may be dismissed for failure to state a claim where the plaintiff alleges too little, failing to meet the minimal federal pleading requirements found in Rule 8 of the

[1] Section 8 of the United States Housing Act of 1937, 42 U.S.C. § 1437 *et seq*., which authorizes a rent assistance program that is run and regulated by the United States Department of Housing and Urban Development. *Chesir v. Hous. Auth. City of Milwaukee*, 801 F. Supp. 244, 246 (E.D. Wis. 1992). The Department contracts with state and local public housing authorities to make money available for the payment of rent on behalf of a specified number of low income individuals. *Id.*; 24 C.F.R. § 982.1(a). To participate in the program, one must apply to the public housing authority for admission. *Chesir*, 801 F. Supp. at 246. Those admitted receive "vouchers." *Id.* A voucher permits the holder to search for a suitable unit within the state and the rental payment is negotiated under the rent assistance program. *Id.*; 24 C.F.R. § 982.1(a). A voucher allows location flexibility because it can be transferred to other states around the country. *Chesir*, 801 F. Supp. at 246; 24 C.F.R. Part 982, Subpart H.

Federal Rules of Civil Procedure. Rule 8(a) requires a "'short and plain statement of the claim' sufficient to notify the defendants of the allegations against them and enable them to file an answer." *Marshall v. Knight*, 445 F.3d 965, 968 (7th Cir. 2006). While it is not necessary for a plaintiff to plead specific facts, she must articulate "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In doing so, a plaintiff may plead herself out of court. *See Tamayo v. Blagojevich*, 526 F.3d 1074, 1086 (7th Cir. 2008); *see also Jackson v. Marion County*, 66 F.3d 151, 153-54 (7th Cir. 1995) ("[A] plaintiff can plead himself out of court by alleging facts which show that he has no claim, even though he was not required to allege those facts. Allegations in a complaint are binding admissions, and admissions can of course admit the admitter to the exit from the federal courthouse." (citations omitted)). In that respect, when a plaintiff pleads facts showing that she does not have a claim, the complaint should be dismissed "without further ado." *Thomson v. Washington*, 362 F.3d 969, 970-71 (7th Cir. 2004).

Plaintiff purports to seek relief pursuant to 42 U.S.C. § 1983. In order to find a defendant liable under § 1983, a plaintiff must establish that (1) she had a constitutionally protected right; (2) she was deprived of that right in violation of the Constitution; (3) the defendant intentionally caused that deprivation; and (4) the defendant acted under color of state law. *Cruz v. Safford*, 579 F.3d 840, 843 (7th Cir. 2009); *Schertz v. Waupaca County*, 875 F.2d 578, 581 (7th Cir. 1989). She also references 42 U.S.C. § 1985(3), which authorizes a claim for damages if two or more persons conspire for the purpose of depriving the plaintiff of equal protection of the laws.

*See Xiong v. Wagner*, 700 F.3d 282, 297 (7th Cir. 2012). To recover under § 1985(3), a party must establish: (1) the existence of a conspiracy; (2) a purpose of depriving a person or class of persons of equal protection of the laws; (3) an act in furtherance of the alleged conspiracy; and (4) an injury to person or property or a deprivation of a right or privilege granted to U.S. citizens. *Id*. (quoting *Brokaw v. Mercer Cnty*., 235 F.3d 1000, 1024 (7th Cir. 2000)).

Plaintiff does not allege that Lewis, as the sole named defendant, conspired or acted together with any other individual to cause her harm. Plaintiff satisfies none of the other criteria for a civil rights conspiracy claim under § 1985(3) either. Construed generously, plaintiff asserts that Lewis made derogatory comments about her on August 30, 2013, and threatened to revoke plaintiff's Section 8 housing voucher in retaliation for complaints that plaintiff filed against her in both state and federal court. Once again, plaintiff provides no information about any state or federal court case against Ms. Lewis and court records do not disclose any before August 2013. More importantly, plaintiff apparently concedes that her Section 8 housing voucher was not terminated. In that respect, assuming that all of plaintiff's allegations are true, she did not suffer any harm as the result of Lewis's threats.[2]

A civil rights plaintiff must allege something more than an expression of hostility to state a claim under the constitution. *See Sherwin Manor Nursing Center, Inc. v. McAuliffe*, 37 F.3d 1216, 1221 (7th Cir. 1994) (although "verbal abuse accompanied by a special

[2] As explained previously, plaintiff's allegation that Lewis threatened to terminate her housing voucher is insufficient to demonstrate an actionable "case" or "controversy" for purposes of establishing jurisdiction under Article III. *See Hollingsworth v. Perry*, — U.S. —, 133 S. Ct. 2652, 2659 (2013).

administrative burden" gives rise an equal-protection claim, anti-Semitic remarks alone are insufficient); *Bell v. City of Milwaukee*, 746 F.2d 1205, 1259 (7th Cir. 1984) ("[D]erogatory references to racial or ethnic backgrounds by themselves obviously do not rise to the level of a constitutional violation."), *overruled on other grounds by Russ v. Watts*, 414 F.3d 783 (7th Cir. 2005). While the court certainly does not approve of racially insensitive remarks, such comments do not by themselves violate the constitution. *See Chavez v. Illinois State Police*, 251 F.3d 612, 646 (7th Cir. 2001) (citations omitted).

Here, plaintiff does not allege that she suffered any harm beyond the disparaging remarks attributed to Lewis. Absent a showing of harm, she cannot demonstrate a due process violation. *See Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970) (noting that due process principles require that a recipient of government benefits have "timely and adequate notice detailing the reasons for a proposed termination" and a meaningful opportunity to be heard); *see also Clark v. Alexander*, 85 F.3d 146, 150 (4th Cir. 1996) ("Federal regulations set out the basic procedural requirements of informal hearings in almost literal compliance with *Goldberg*.").

Her conclusory allegations also fail to establish an equal protection violation. In that regard, even as a "class of one," plaintiff does not establish that she was treated differently from other similarly situated persons or that Lewis otherwise acted with discriminatory intent. *See Village of Willowbrock v. Olech*, 528 U.S. 562 (2000); *see also Chavez v. Illinois State Police*, 251 F.3d 612, 646 (7th Cir. 2001). As such, the court finds that plaintiff has not alleged sufficient facts from which an inference may be drawn that Lewis violated her rights under federal law.

Having already granted plaintiff leave to amend, the court finds that she does not articulate a viable claim. Under these circumstances, the complaint will be dismissed as both legally frivolous and for failure to state a claim upon which relief may be granted.

ORDER

IT IS ORDERED that Plaintiff Miriam Briggs-Muhammad's request for leave to proceed is DENIED and her complaint is DISMISSED with prejudice as legally frivolous and for failure to state a claim.

Entered this 29th day of January, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge