

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

ROSALYN M. GREENE

Complainant

and

**HELLENA VILLEMMAIN AND
VILLEMMAIN REALTY, INC.**

Respondent

Complaint #8915

(AKR) H3102799 (24509) 020400

HUD #: 05 – 00 – 0146 – 8

CHIEF ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND RECOMMENDATIONS

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ALJ' S REPORT BY:

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INTRODUCTION AND PROCEDURAL HISTORY

Rosalyn M. Greene (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on February 4, 2000.

The Commission investigated and found probable cause that unlawful discriminatory practices had been engaged in by Hellena Villemain and Villemain Realty, Inc. (Respondent) in violation of Revised Code (R.C.) 4112.02(H).

The Commission issued a Complaint, Notice of Hearing, and Notice of Right of Election on October 26, 2000. The Commission subsequently attempted conciliation. The matter was scheduled for public hearing after conciliation efforts failed.

The Complaint alleges that Respondent denied Complainant equal opportunity to purchase a lot on Skylark Street, because of her race.

Respondent filed a timely Answer to the Complaint on November 30, 2000, admitting certain factual allegations, but denying that it engaged in any unlawful discriminatory practices, in addition to pleading affirmative defenses.

A public hearing was held on February 26-27, 2002 and September 24, 2002 at Ocasek Government Building in Akron, Ohio.

The record consists of the previously described pleadings, a transcript consisting of 509 pages of testimony, exhibits admitted into evidence at the hearing, and the post-hearing briefs filed by the Commission on November 7, 2002; by Respondent on December 31, 2002; the Commission's reply brief, filed on January 10, 2003; and Complainant's *amicus* brief, filed January 9, 2003.¹

¹ Complainant's counsel requested leave to file an *amicus* brief. The Administrative Law Judge (ALJ) granted leave, pursuant to O.A.C. 4112-3-7(C)(4).

FINDINGS OF FACT

The following findings are based, in part, upon the Administrative Law Judge's (ALJ) assessment of the credibility of the witnesses who testified before the ALJ in this matter. The ALJ applied the tests of worthiness of belief used in current Ohio practice. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed; each witness's strength of memory; frankness or the lack of frankness; and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on February 4, 2000.

2. The Commission determined on October 26, 2000 that it was probable that unlawful discriminatory practices had been engaged in by Respondent in violation of R.C. 4112.02(H).

3. The Commission attempted and failed to eliminate the alleged unlawful discriminatory practices by informal methods of conciliation.

4. Respondent is a provider of housing accommodations at Skylark Street in Akron, Summit County, Ohio.

5. Respondent Hellena Villemain is a white person.

6. Complainant is a black person.

7. Complainant has been employed by the Summit County Board of Mental Retardation since 1994.

8. Complainant has one biological child and is a caregiver for three foster children. The foster children that Complainant cares for are classified as therapeutic, which means that they have difficult behavioral issues.

9. At the time that Complainant was looking for a new residence, she resided at 287 Theodore Street in Akron, Ohio. Complainant and her mother shared the residence. The Theodore Street residence was Complainant's childhood home.

10. Complainant's annual income from the Summit County Board of Mental Retardation was \$29,300. She also received between \$48,000 - \$49,000 annually for foster care.

11. In 1999 Complainant was looking for an existing home or a lot in a "nice area that was conducive to raising children". She was looking for a quiet neighborhood in a good school district.

12. On Sunday, October 24, 1999, Complainant was driving through north Akron looking at real estate. She was specifically driving on Cuyahoga Street and turned into a street named Sackett Hills.

13. She saw a house listed for sale and noticed that the owner's name was Mrs. Zampelli. She recognized the name as that of a person with whom she had attended the same high school

14. Complainant was able to talk with Mrs. Zampelli and told her that she was looking for lots. Mrs. Zampelli told Complainant that there were lots available on Skylark Drive.

15. Complainant was looking for lots in the price range from \$30,000 - \$60,000.

16. After Complainant entered the Skylark Drive development, she saw a map to the left. It was a large map of the development with an outline of eight (8) lots. The map was shaped in the same manner as the development.

17. The map had a "For Sale" sign on it with Respondent's name and telephone number. The map did not indicate which lots were for sale.

18. Complainant liked the lots on Skylark Drive because they met part of the criteria that she was looking for: they were in a secluded *cul-de-sac* which Complainant felt would be quiet and conducive to raising children.

19. That same day Complainant telephoned Celeste Tolbert, a black person, who is a Century 21 agent. Complainant asked Ms. Tolbert to contact Respondent and make an appointment to see the property.

20. Complainant became acquainted with Ms. Tolbert because she is friends with Ms. Tolbert's brother. Complainant and Ms. Tolbert also attend the same church.

21. On Monday, Complainant had not heard from Ms. Tolbert regarding her request for an appointment to view the Skylark Drive property.

22. Complainant called the number that was listed on the map.

23. The person who answered the telephone identified herself as the Respondent, Hellena Villemain.

24. Respondent agreed to meet Complainant at the lot on Wednesday, at 5:00 p.m.

25. During the conversation Respondent indicated that Lot #8 (eight) was the only lot available.

26. When Complainant arrived, Respondent was in the vicinity of Lots #7 (seven) and #8. Complainant was accompanied by her fiancé, Scott Caldwell. They got out of the car and went up to Respondent and introduced themselves.

27. Respondent stated that Lot #7 had sold the previous day, and she was going to build a spec house on Lot #8. (Tr. 27) Shortly thereafter a young male and female, both white, who were already parked in a *cul-de-sac* in the development, drove over to where Complainant and Respondent were standing. They got out of their car.

28. Respondent indicated the young man was the person that she had sold the lot to the day before.

29. The next day Complainant went to Fair Housing Contact Services (FHCS) and filed a complaint.

30. On October 28, 1999, an African-American female tester employed by FHCS called Respondent to express an interest in purchasing a lot on Skylark Drive.

31. During the one-minute telephone conversation, Respondent told the tester that the lots were sold and the conversation ended.

32. On October 30, 1999 and November 9, 1999, a Caucasian female tester employed by FHCS called Respondent and left messages on both dates expressing an interest in purchasing a lot on Skylark Drive.

33. On November 9, 1999, Respondent left a message on the tester's voicemail stating that there were still lots available and for the tester to call back if she was still interested.

34. On November 11, 1999, the tester called back and left a message stating that she was still interested. The tester never received a call back from Respondent.

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.

1. The Commission alleges in the Complaint that Respondent denied Complainant equal opportunity to purchase a lot on Skylark Street, because of her race.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides in pertinent part, that:

It shall be an unlawful discriminatory practice:

(H) For any person to:

(1) Refuse to . . . negotiate for the sale, . . . of housing accommodations, . . . or *otherwise deny or make unavailable housing accommodations* because of race, . . .²
(Emphasis added.)

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(H) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

4. Federal case law applies to alleged violations of R.C. Chapter 4112. *Little Forest Med. Ctr. of Akron v. Ohio Civil Rights Comm.*, (1991), 61 Ohio St.3d 607. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under the federal Fair Housing Act of 1968 (Title VIII), as amended.

² R.C. 4112.02(H)(1) applies to the availability of housing. This provision reaches "every practice which has the effect of making housing more difficult to obtain on prohibited grounds", including denying a prospective tenant equal opportunity to rent housing accommodations. *United States v. City of Parma, Ohio*, 494 F.Supp. 1049, 1053 (N.D. Ohio 1980, *aff'd. as modified*, 661 F.2d 562 (6th Cir. 1981).

5. The same standards of proof that apply to employment discrimination cases generally apply to housing discrimination cases.³ Normally, these standards require the Commission to first prove a *prima facie* case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 5 FEP Cases 965 (1973). The proof required to establish a *prima facie* case may vary on a case-by-case basis. *Id.*, at 802, 5 FEP Cases at 969, n.13. In this case, the Commission may establish a *prima facie* case of housing discrimination by proving that:

- (1) Complainant is a member of a protected class;
- (2) Complainant expressed interest in viewing available housing accommodations; and
- (3) After she expressed interest in viewing housing accommodations, Respondent subjected Complainant to disparate treatment under circumstances which give rise to an inference of unlawful discrimination.

³ Although the Supreme Court has never addressed the issue, “. . . lower courts have generally assumed that . . . precedents from the employment discrimination field should be followed in interpreting Title VIII.” R. Schwemm, *Housing Disc.*, 1996 Ed. at 10-2.

6. The Commission proved a *prima facie* case of race discrimination.⁴

The Commission established the first element of a *prima facie* case because Complainant, a black person, is a member of a protected class.

7. The Commission established the second element when Complainant testified that she saw an available lot and contacted Respondent at the number listed on the sign advertising lots for sale. Complainant saw the sign on a Sunday, contacted Respondent on Monday, and was told that Lot #8 was for sale. Respondent and Complainant scheduled an appointment to meet at the development two days later, on Wednesday, at which time Respondent told Complainant that Lot #7 had sold on Tuesday, and she intended to use Lot #8 for a spec house. (Tr. 27) Respondent did not offer to show Complainant any other lot in the Skylark Drive development or any other properties which she had available for sale.

⁴ The burden of establishing a *prima facie* case of discrimination is not onerous. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254, 25 FEP Cases 113, 116 (1981). It is simply part of an evidentiary scheme "intended progressively to sharpen the inquiry into the elusive factual question of intentional discrimination." *Id.*, at n.8.

8. The Commission established the third element of a *prima facie* case through the testimony of the testers and through the cross-examination of Respondent. The following evidence supports the finding that Respondent subjected Complainant to disparate treatment under circumstances which give rise to an inference of housing discrimination:

- (1) The person (a white male) that Respondent testified she took an offer from the day before her appointment with Complainant lived in her condominium complex. He was also the son of an acquaintance of Respondent. Respondent's testimony regarding the availability of other lots and why those lots were not shown to Complainant was not credible. Respondent testified that she did not show Complainant other lots because Complainant did not ask to see any other lots.⁵ Respondent, being a savvy business

5 On direct examination, Respondent's testimony regarding her meeting with Complainant (Tr. 331):

- Q. Okay. Can you walk me through step-by-step your initial contact with Ms. Greene whenever you first saw her?
- A. Well, from what I recall, I was there first. And Mrs. Greene and the gentleman came driving up and they parked, you know, close to lot 8 where I was standing. As they came up I introduced myself and told them who I was. And I didn't give her my card at that time. What I did was I told her I'm really sorry, but the lot that we were talking about is not available now. I said I—I feel we had an offer—we had an offer yesterday, it looks—it looks good; the only thing we could possibly do would be make a backup offer. But I said that there would be a spec home that would be available. And she asked me about the price of the home that was at the top of the hill and also what the spec home—what price it would be (Tr. 333), (. . .) and then I gave her my card and I said, well there are other lots available. I said if you want—I said give me a call here and I said maybe we can find something else. And at that Mrs. Green departed and so did (sic) . . .

On cross examination Respondent testified in regard to her reasons for not contacting Complainant regarding other available properties (Tr. 391):

- Q. Okay. So—but you made no effort to follow up on her interest that she expressed; is that correct?
- A. No, because I felt that she wasn't really interested because of –
- Q. She only—

person with the goal to sell property for a profit could have offered to sell Lot #8, the lot on which she subsequently built a spec house, or any other lot that was available. Complainant's testimony regarding Respondent's failure to offer to show her other available lots is more credible. A reasonable inference can be drawn that Respondent did not want to engage Complainant as a potential buyer of any housing accommodations in the Skylark Drive development. Additionally, Respondent's testimony regarding the submission of the paperwork for the offer/sale transaction with the purchaser of Lot #7 was fraught with vague recollections and inconsistencies;

- (2) The first tester who called Respondent after Complainant filed a charge of discrimination was told that there were no properties available. The first tester is African-American, and

A. The fact she didn't converse with me.

Q. She only asked two questions?

A. Yes. I didn't—felt that—and there wasn't anything directly there that I could do for her at that time, so I just gave her my card. (. . .)

Q. I mean, I really thought from your testimony your purpose of meeting with her even though the lot was sold was to see if you could do more business with her . . .

A. It was.

Q. But you did not take her number?

A. No, I didn't take---I didn't take her number.

Q. Now, isn't it correct that the lot you intended to show her that day, lot eight, was not sold?

A. Well, it was sold to me.

- (3) The second tester who called Respondent after Complainant filed a charge of discrimination did not make contact with Respondent but left a message on Respondent's voicemail regarding her interest in purchasing a lot in the Skylark Drive development. Respondent left a message saying that there were available lots. The second tester is white.⁶

9. The Commission having established a *prima facie* case, the burden of production shifted to Respondent to "articulate some legitimate, non-discriminatory reason" for her actions. *McDonnell Douglas, supra* at 802, 5 FEP Cases at 969. To meet this burden of production, Respondent must:

". . . clearly set forth, through the introduction of admissible evidence," reasons for . . . [her] actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of . . . [her actions].

St. Mary's Honor Center v. Hicks, 113 S. Ct. 2742, 2747, 62 FEP Cases 96, 99 (1993), *quoting Burdine, supra* at 254-255, 25 FEP Cases at 116.

⁶ At least one court has recognized that the race of the speaker can be determined by the listener over a phone conversation based on clues from diction and demographics. *Bullen v. Thanasouras*, DP-H: Fair Housing-Fair Lending Rptr. 155,897 (N.D. Ill. 1994), 1994 U.S. Dist. LEXIS 115. Celeste Tolbert, a black person, called Respondent after Complainant was told Lot #8 in the Skylark Drive development was sold. Ms. Tolbert was told that lots were available in the Skylark Drive development. Ms. Tolbert's hearing testimony supports the factual determination that she speaks standard English. The average person listening to her speak would be unable to detect any diction or cultural clues that would identify her race.

10. Respondent's articulated reason was that an offer had already been made on the lot a day before the scheduled appointment with Complainant. As stated above, the record supports a finding that Respondent's actions in refusing to negotiate for the sale of available housing accommodations were more likely than not motivated by a discriminatory animus.

11. The Commission's establishment of a *prima facie* case, coupled with the ALJ's belief of the Commission's evidence, entitles Complainant to relief as a matter of law.

DAMAGES

1. When there is a violation of R.C. 4112.02(H), the statute requires an award of actual damages shown to have resulted from the discriminatory action, as well as reasonable attorney's fees. R.C. 4112.05(G)(1). The statute also provides that the Commission, in its discretion, may award punitive damages.

ACTUAL DAMAGES

2. The purpose of an award of actual damages in a fair housing case, as in employment discrimination cases, "is to put the plaintiff in the same position, so far as money can do it, as . . . [the plaintiff] would have been had there been no injury or breach of duty . . ." *Lee v. Southern Home Sites Corp.*, 429 F.2d 290, 293 (5th Cir. 1970 (citations omitted)). To that end, victims of housing discrimination may recover damages for tangible injuries, such as economic loss, and intangible injuries, such as humiliation, embarrassment, and emotional distress. See *Steele v. Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973) (actual damages of \$1,000 awarded to plaintiff consisting of \$13.25 in telephone expenses, \$125.00 in moving and storage expenses, and \$861.75 for emotional distress and humiliation). Damages for intangible injuries may be established by testimony or inferred from the circumstances.⁷ *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

⁷ Although emotional injuries are difficult to quantify, "courts have awarded damages for emotional harm without requiring proof of the actual value of the injury." *HUD v. Paradise Gardens*, P-H: Fair Housing-Fair Lending Rptr. ¶125,037, 25,393 (HUD ALJ 1992), citing *Block v. R. H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983) (other citations omitted). The determination of actual damages from such injuries "lies in the sound discretion of the Court and is essentially intuitive." *Lauden v. Loos*, 694 F.Supp. 253, 255 (E.D. Mich. 1988).

3. In this case, the Commission did not present evidence that Respondent's discriminatory actions caused Complainant economic loss.

4. The Commission presented evidence that Respondent's discriminatory actions humiliated Complainant and caused her emotional distress. Complainant testified that the affect that Respondent's discriminatory actions had on her were "devastating". (Tr. 78). In light of Complainant's testimony and the totality of the circumstances, the ALJ recommends that Complainant be awarded \$4,000.00 for humiliation and emotional distress.

PUNITIVE DAMAGES

5. The purpose of an award of punitive damages pursuant to R.C. 4112.05(G) is to deter future illegal conduct. O.A.C. 4112-6-02. Thus, punitive damages are appropriate "as a deterrent measure" even when there is no proof of actual malice. *Schoenfelt v. Ohio Civil Right Comm.*, (1995), 105 Ohio App.3d 379, 385, *citing and quoting, Marr v. Rife*, 503 F.2d 735, 744 (6th Cir. 1974).

6. The amount of punitive damages depends on a number of factors, including:

- The nature of Respondent's conduct;
- Respondent's prior history of discrimination;
- Respondent's size and profitability;
- Respondent's cooperation or lack of cooperation during the investigation of the charge; and
- The effect Respondent's actions had upon Complainant.⁸

O.A.C. 4112-6-01.

7. Applying the foregoing criteria to this case:

- Respondent's actions were intentional. Respondent intended to deny a black person (prospective homebuyer) the opportunity to negotiate for the purchase of available lots at the Skylark Drive development.
- The Commission did not present evidence that there have been previous findings of unlawful discrimination against Respondent.
- The Commission did not present evidence at the hearing about the size of Respondent's housing accommodations or its profitability.

⁸ This criteria is more appropriately considered when determining actual damages.

- Neither the Commission nor Respondent presented any evidence regarding Respondent's cooperation or lack of cooperation during the investigation.

8. Based on the foregoing discussion, the ALJ recommends that Respondent be assessed punitive damages in the amount of \$6,000.00.

ATTORNEY'S FEES

9. The Commission is entitled to attorney's fees. R.C. 4112.05(G)(1); *Schoenfelt, supra*, at 386. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.

10. In order to create a record regarding attorney's fees, the Commission's counsel should file affidavits from plaintiffs' attorneys in Summit County, Ohio regarding the reasonable and customary hourly fees they charge in housing discrimination cases. Also, a detailed accounting of the time spent on this case must be provided and served upon Respondent. Respondent may respond with counter-affidavits and other arguments regarding the amount of attorney's fees in this case.

11. If the Commission adopts the ALJ's Report and the parties cannot agree on the amount of attorney's fees, the Commission should file an Application for Attorney's Fees within thirty (30) days after the ALJ's Report is adopted. Respondent may respond to the Commission's Application for Attorney's fees within thirty (30) days from receipt of the Commission's Application for Attorney's Fees.

12. Meanwhile, any objections to this Report should be filed pursuant to the Ohio Administrative Code. Any objections to the recommendation of attorney's fees can be filed after the ALJ makes her Supplemental Recommendation to the Commission regarding attorney's fees.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint #8915 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code;

2. The Commission order Respondent, within ten (10) days of receipt of the Commission's Final Order, to pay Complainant \$4,000.00 in actual damages; and

3. The Commission order Respondent, within ten (10) days of receipt of the Commission's Final Order, to pay Complainant \$6,000.00 in punitive damages.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

November 3, 2003

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

ROSALYN M. GREENE

Complainant

and

**HELLENA VILLEMMAIN AND
VILLEMMAIN REALTY, INC.**

Respondent

Complaint No. 8915
(AKR) H3102799 (24509) 020400
HUD #: 05 – 00 – 0146 – 8

ADDENDUM TO CHIEF ADMINISTRATIVE LAW JUDGE'S RECOMMENDATIONS

RE: THE COMMISSION'S APPLICATION FOR ATTORNEY'S FEES

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ALJ' S REPORT BY:

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PROCEDURAL HISTORY

On November 3, 2003, the ALJ issued Findings of Fact, Conclusions of Law, and Recommendations (ALJ's Report) on liability and damages in Complaint No. 8915. Besides a Cease and Desist Order, the ALJ's Report recommended the Commission award Complainant Rosalyn M. Greene \$4,000.00 in actual damages and assess Respondent \$6,000.00 in punitive damages.

The Commission adopted the ALJ's Report on January 8, 2004. Counsel for the Commission filed an Application for Attorney's Fees on February 23, 2004.¹

¹ Respondent did not file a reply to the Application for Attorney's Fees.

CONCLUSIONS OF LAW AND DISCUSSION

1. When the Commission finds that a housing provider has violated R.C. 4112.02(H), the Commission must require the discriminating housing provider to pay reasonable attorney's fees.

If the commission finds a violation of division (H) of section 4112.02 of the Revised Code, the commission additionally *shall require the respondent to pay actual damages and reasonable attorney's fees* (Emphasis added.)

Such attorney's fees may be paid directly to the Commission's counsel, the Office of the Ohio Attorney General, pursuant to R.C. 109.11. *Shoenfelt v. Ohio Civ. Rights Comm.* (1995), 105 Ohio App.3d 379, 385-86.

2. In determining what constitutes reasonable attorney's fees in a particular case, the usual starting point and presumptively reasonable amount is the lodestar calculation, e.g., the number of hours reasonably expended on the litigation, multiplied by a reasonable hourly rate. *Blum v. Stenson*, 465 U.S. 886, 897, 34 FEP Cases 417, 421 (1984). As the fee applicant, the Commission must provide evidence documenting the time expended on the case. *Hensley v. Eckerhart*, 461 U.S. 424, 433, 31 FEP Cases 1169, 1174 (1983). The Commission is not required to record the

time expended “in great detail”, but it should at least identify the “general subject matter” of such expenditures. *Id.*, at 437, 31 FEP Cases at 1174, n.12. Overall, the Commission’s counsel must exercise “billing judgment” in excluding hours that are excessive, redundant, or otherwise unnecessary. *Id.*, at 434, 31 FEP Cases at 1173.

3. The Commission also has the burden of providing evidence that supports the requested hourly rate. *Id.* Besides an affidavit from its counsel, the Commission must provide other evidence showing that the requested hourly rate is comparable to the prevailing market rate for similar work performed in the community. In other words, the Commission must show that the requested hourly rate is “in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum, supra* at 895-96, 34 FEP Cases at 421, n.11.

4. Although the lodestar calculation is presumed reasonable, there may be circumstances where that calculation “results in a fee that is either unreasonably low or unreasonably high.” *Id.*, at 897, 34 FEP

Cases at 421. In such cases, the ALJ may adjust the lodestar amount upward or downward, at her discretion, in light of the factors listed in Disciplinary Rule 2-106(B). *Bittner v. Tri-County Toyota* (1991), 58 Ohio St.3d 143, 145-46. These factors include:

The time and labor involved in maintaining the litigation; the novelty and difficulty of the questions involved; the professional skill required to perform the necessary legal services; the attorney's inability to accept other cases; the fee customarily charged; the amount involved and the results obtained; any necessary time limitations; the nature and length of the attorney/client relationship; the experience, reputation, and ability of the attorney; and whether the fee is fixed or contingent.²

5. In weighing these factors, the most important factor is the results obtained. *Hensley, supra* at 434, 31 FEP Cases at 1173. To be upheld, a fee award must be "reasonable in relation to the results obtained." *Id.*, at 440, 31 FEP Cases at 1176.

² Since several of these factors are subsumed within the lodestar calculation, the factfinder should avoid considering a factor twice. *Cf. Hensley, supra* at 434, 31 FEP Cases at 1173, n.9.

6. The Commission satisfied its burden of documenting the time expended in this case. The Commission provided a billing log containing the subject matter of the work performed, the dates the work was performed, and the time spent on each activity. The billing log indicates that counsel spent 62.1 hours on legally-related work.

7. The Commission also satisfied its burden of providing evidence in support of the requested hourly rate (\$200.00). The Commission provided an affidavit from Brian J. Williams and Andrew L. Margolius, both of whom are attorneys who represent plaintiffs in civil rights cases in the Akron area. Williams stated his hourly fee is \$195.00 and that this rate is quite reasonable for legal work in the Summit County area. Additionally, Margolius stated his hourly fee is \$245.00 and that an hourly rate of \$170.00 to \$200.00 per hour is “very reasonable, and is consistent with [Ms. Tobocman’s] experience and the prevailing market rate in the Akron, Ohio area.”

8. After reviewing the billing log and the affidavits provided by the Commission, the ALJ found the number of hours claimed and the requested hourly rate reasonable.

9. Having considered the results obtained by the Commission, the ALJ concludes that the requested fee is reasonable in relation to the results. Therefore, the Commission is entitled to \$12,420.00 in attorney's fees for time expended on legally-related work.

10. The Commission also requested compensation for 8.5 hours of travel time. The rate of compensation for travel time is less than the rate of compensation for legal work. A reasonable rate of compensation for travel time is \$25 per hour. Therefore, the ALJ recommends an award of \$212.50 for travel time.

RECOMMENDATIONS

For all of the foregoing reasons, the ALJ recommends that the Commission's Final Order in Complaint No. 8915 include an Order requiring Respondent to pay \$12,632.50 in attorney's fees to the Office of the Ohio Attorney General.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

April 26, 2004