

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTERS OF:

DOUGLAS WATSON & MINDY WATSON

and

MIAMI VALLEY FAIR HOUSING CENTER

Complainants

and

E. DWAYNE BREWER & JIM MOORE

Respondents

Complaint No. 9382
(DAY) H6081901 (15389) 012902
HUD: 05 – 02 – 0190 - 8

Complaint No. 9391
(DAY) H6082301 (15503) 021302
HUD: 05 – 02 – 0231 – 0

**CHIEF ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

**JIM PETRO
ATTORNEY GENERAL**

Marilyn Tobocman
Principal Assistant Attorney General
Civil Rights Section
State Office Building, 11th Floor
615 West Superior Avenue
Cleveland, OH 44113-1899
(216) 787-3030

Counsel for the Commission

Jim Moore
947 North 11th Street
Miamisburg, OH 45342

Respondent Moore

E. Dwayne Brewer
13048 State Route 725
Germantown, OH 45405

Respondent Brewer

**JIM PETRO
ATTORNEY GENERAL**

Terra L. Colvin, Esq.
Assistant Attorney General
Civil Rights Commission
State Office Tower, 15th Floor
30 East Broad Street
Columbus, OH 43215-3428
(614) 466-7900

Counsel for the Commission

Jim McCarthy
Miami Valley Fair Housing Center
21 – 23 East Babbit Street
Dayton, OH 45405

Complainant MVFHC

ALJ'S REPORT BY:

Denise M. Johnson
Chief Administrative Law Judge
Ohio Civil Rights Commission
1111 East Broad Street, Suite 301
Columbus, OH 43205-1379
(614) 466-6684

INTRODUCTION AND PROCEDURAL HISTORY

Douglas and Mindy Watson and Miami Valley Fair Housing Center, Inc. (Complainants) filed sworn charge affidavits with the Ohio Civil Rights Commission (Commission) on January 29, 2002 and February 13, 2002, respectively.

The Commission investigated the charges and found probable cause that E. Dwayne Brewer and Jim Moore (Respondents) engaged in unlawful discriminatory practices in violation of Revised Code (R.C.) 4112.02(H)(1), (4), (7) and (8).

The Commission issued Complaints on October 2, 2002 and October 10, 2002. Respondents did not file Answers to the above referenced Complaints. The Commission filed a Motion for Default Judgment, in accordance with O.A.C. 4112-3-06(G), on April 8, 2003.¹

¹ The Commission's Motion for Default Judgment was granted at the hearing.

The Complaints alleged the following:

- (1) With respect to Complainants Douglas and Mindy Watson: that Respondents have denied access to and rental of housing accommodations for reasons not applied equally to all persons without regard to their familial status, and
- (2) With respect to Complainant Miami Valley Fair Housing Center (MVFHC): that the unlawful discriminatory practices of Respondents have caused Complainant to divert its resources to counteract these practices, and have frustrated the purpose and mission of Complainant.

A public hearing on damages was held on April 14, 2003 at the Commission's regional office in Dayton, Ohio.

The record consists of the previously described pleadings, the Motion for Default Judgment and exhibits, a 74-page transcript, exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on July 15, 2003.

FINDINGS OF FACT

The following findings of fact are based upon the Administrative Law Judge's assessment of the credibility of the witnesses who testified before her in these cases. These findings are also based upon the pleadings, exhibits, and Admissions submitted by Counsel for the Commission.

1. Complainants filed sworn charge affidavits with the Commission on January 29, 2002 and February 13, 2002, respectively.

2. The Commission determined on June 13, 2002 and September 12, 2002 that it was probable Respondents engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H)(1), (4), (7) and (8).

3. The Commission attempted, but failed to resolve these matters by informal methods of conciliation.

4. Respondent E. Dwayne Brewer (Respondent Brewer) has an ownership interest in the property located at 947 North Eleventh Street, Miamisburg, Ohio.

5. Respondent Jim Moore (Respondent Moore) is the property manager for Respondent Brewer regarding the vacant units mentioned above.²

6. MVFHC is an organization that seeks to eliminate housing discrimination against all persons because of race, color, religion, national origin, sex, disability, familial status, or any other characteristic protected under state or local laws. In furthering this goal, MVFHC engages in activities designed to “encourage fair housing practices through educational efforts, assists persons who believe they have been victims of housing discrimination (. . .)”³

7. Complainants Douglas and Mindy Watson are the custodial parents of two children, Crystal and Christine.⁴

² “Respondent Jim Moore is the person designated by you to answer inquires regarding vacant units at 947 North Eleventh Street, Miamisburg, Ohio 45342.” Comm. Motion For Default Judgment, Ex. 19, Comm. Request For Admissions.

³ MVFHC Mission Statement. (Comm. Ex. 3)

⁴ As of the hearing date, Complainant Mindy Watson testified that Crystal and Christine were nine and eight years old, respectively. (Tr. 7)

8. Complainant Mindy Watson moved from Las Vegas to Ohio in July of 2000.⁵

9. Complainants lived with Complainant Doug Watson's parents until they secured jobs that would enable them to afford a place of their own.⁶

10. Complainant Mindy Watson searched for an apartment by looking through newspaper advertisements. She wanted to get an idea of the amount of money they would need to secure an apartment in an area which met their shared criteria/factors for raising their children. Complainants had a three-year plan with the goal of purchasing a home. In the interim, they wanted to spend the minimum/lowest amount of money they could in order to reach their goal.

11. Complainants wanted to accomplish their plan without moving into public housing. They also wanted to be located in a school district where their children would get a decent education.

⁵ Complainant Douglas Watson and the children moved to Ohio three weeks after his wife arrived.

⁶ Complainant Mindy Watson found a job as a leasing agent for a property manager. Complainant Douglas Watson found a job as a customer service representative for Metropolitan Life, Property and Casualty.

12. Finally, Complainants were considering the location of the apartments in relationship to their jobs.

13. Complainants researched the quality of the public school systems in the area from an article in *The Dayton Daily News*.

14. Based on published proficiency test scores, Dayton Schools were the lowest and Springboro Schools were the highest. The other school districts that received a high ranking were Miamisburg, West Carrollton, and Washington Township.

15. Complainant saw an apartment listing in a Sunday newspaper. The advertisement was in big captions and said:

DAYTON MALL AREA, 2 bdrm, A/C, W/D hookup, patio, ceiling fans. Nice View. Ask about our discount & holding option \$375. 895-4141.⁷

16. The Dayton Mall area is in the Centerville area which, based on Complainants' selection criteria, was considered a prime location.

⁷ The classified advertisement that appeared in the newspaper was for the purpose of renting vacant units at 947 North Eleventh Street, Miamisburg, Ohio 45342.

17. The price of the apartment in the advertisement was approximately \$375.00. It was very low compared to everything else that Complainant Mindy Watson saw.

18. Complainant Mindy Watson made a telephone call.

19. Complainant asked Respondent Moore about the price of the vacant units that were advertised in the newspaper.

20. Complainant told Respondent Moore that she needed to know which school district the apartments were in.

21. His response was, "Oh, you have kids?"

22. When Complainant responded in the affirmative, Respondent Moore replied: "If you have kids you're going to be paying \$15.00 more per month per child."⁸

⁸ The apartment would have been \$30.00 more per month for Complainants, which would bring the total monthly amount to \$405.00.

23. Prior to moving to Ohio, Complainant Mindy Watson had worked in the field of property management and had received training on the laws prohibiting discrimination based on familial status.

24. Complainant was angry, upset and felt she was reliving a similar experience she had when she was a young single mother living in Las Vegas. Complainant was evicted from her apartment because she had a child. As a result Complainant and her daughter had to live in a homeless shelter for three days until they found a place to live.

25. Complainant tried to tell Respondent Moore that what he was saying was against the law, but he disagreed with her.

26. At the time Complainant was working as a leasing manager. When she told her supervisor, Julie Back, about the telephone call, Ms. Back stated that Respondents' policy was in violation of Ohio law.

27. Ms. Back telephoned Respondent Moore with Complainant within listening range.

28. Complainant heard Ms. Back state her name, tell Respondent Moore she was calling regarding the advertisement for apartments in the Sunday newspaper, and wanted to know the prices. She also stated that she had two children.

29. Complainant heard Ms. Back say, “You better recant what you say because you are breaking the law.”

30. Complainant never viewed the apartment.

31. Complainants ended up moving to 1332 Camp Hill Way in West Carrollton, Ohio. Complainants signed a one-year lease with a monthly rent of \$540.00.⁹

32. Complainants’ experience living at the Camp Hill Way apartment was “terrible”. The apartment was completely infested with roaches and ants. They also had problems with their neighbors.

⁹ In September Complainants experienced a \$10.00 rate increase to \$550.00 per month.

33. When Complainants' lease expired, they moved to another apartment one block away because they wanted to keep their children in the same school. Complainants drove the children to school from Springboro to West Carrollton, which is 50 miles one way. Complainants did this for almost six weeks.

34. Respondent's apartment also would have been closer to Complainants' places of work.

35. Complainants Douglas and Mindy Watson were very upset by Respondents' actions. Complainant Douglas Watson testified that his wife was very angry and upset and lost "a lot of sleep" over the incident. (Tr. 30, 38)

36. MVFHC conducted testing, starting August 20, 2002, as a result of contact by Complainants Douglas and Mindy Watson.

37. Respondent Moore informed MVFHC's agents that the housing accommodations in question were available, but an additional charge of \$15.00 per month, per child was assessed for every resident under the age of eighteen (18). Respondent Moore also made statements that indicated a preference based on the applicant's race.

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, conclusions, and the arguments 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 Complaints allege that Respondents maintain policies and practices for the rental of their housing accommodations that have the purpose or effect of denying housing accommodations to persons because of their

familial status and race. These policies and practices have subjected Complainants to “different terms and conditions of rental” because of their familial status and caused MVFHC to divert its resources to counteract these practices, in addition to frustrating its purpose and mission.

2. The Complaints further allege that Respondents’ actions constitute violations of R.C. 4112.02(H) (1), (4), (7) and (8). These provisions make it unlawful for any person to:

- (1) Refuse to rent, lease . . . or otherwise make available housing accommodations because of race, . . . familial status
- (4) Discriminate against any person in the terms or conditions of . . . renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations . . . because of . . . familial status
- (7) Except as otherwise provided in division (H)(8) or (17) of this section, make any inquiry, elicit any information, . . . concerning race, . . . familial status
- (8) . . . make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning race, . . . in connection with the sale or lease of any housing accommodations

3. R.C. 4112.01(A)(15) defines “familial status” as either:
- (a) One or more individuals who are under eighteen years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian; or
 - (b) Any person who is pregnant or in the process of securing legal custody of any individual who is under eighteen years of age.

4. 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).

5. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569. 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.¹⁰

¹⁰ Sections 3604(b) of Title VIII is substantially the same as R.C. 4112.02(H)(4).

6. In this case, there is direct evidence of familial status and race discrimination.¹¹

7. The Commission proved that Respondents had a rental policy which provided for a \$15.00 per month, per child surcharge. This policy, on its face, discriminated against Complainants Douglas and Mindy Watson because it subjected them to unequal rental conditions not imposed on households composed solely of adults. Such unequal rental conditions violate R.C. 4112.02(H)(4) and (8).

8. Further, Respondent Moore also told MVFHC's agents that there was a preference for potential renters based on race. These statements, on their face, discriminate against individuals based on their race in violation of R.C. 4112.02(H)(7) and (8).

¹¹ Direct evidence is "evidence which, if believed, proves the fact without inference or presumption." *Brown v. East Mississippi Electric Power Assn.*, 61 FEP Cases 1104, 1106 (5th Cir. 1993).

9. Respondents in the instant cases showed a blatant disregard for the prohibitions against discriminatory conduct under R.C. 4112 by imposing a fee for families that have children and articulating a racial preference for renters of Respondents' housing facilities.

DAMAGES

1. When the Commission has proven a violation of the statute, Complainant is entitled to relief. Relief includes an award of actual damages shown to have resulted from the discriminatory action. R.C. 4112.05(G)(1). Relief may also include 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 expense, \$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.¹² *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

COMPLAINANTS DOUGLAS AND MINDY WATSON

3. In this case, the evidence showed that Complainants suffered the following actual damages:

(a) Rental Rate Differential –	\$ 3,380.00
(b) Mileage for Children’s Education –	91.80
(c) Work-related Mileage –	266.77
(d) Emotional Distress and Humiliation –	<u>\$ 8,000.00</u>
Total:	\$11,738.57

¹² Although emotional injuries are difficult to quantify, "courts have awarded damages for emotional harm without requiring proof of the actual value of the injury." *Paradise Gardens, supra*, at 25,393, 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).

COMPLAINANT MIAMI VALLEY FAIR HOUSING CENTER

4. In this case, the evidence showed that MVFHC suffered the following tangible/out-of-pocket expenses:

Calculation of Rental Test Costs:

(a) Testers' Fee (\$25.00 per test x 2 testers)	\$ 50.00
(b) Supervision	300.00
(c) Initial Analysis & Debriefing	300.00
(d) Final Analysis & Review Form prep	300.00
(e) Overhead	<u>\$ 213.75</u>
Total Per Test:	(\$ 1,163.75)

A total of three (3) matched pairs were performed using (6) different testers. \$ 3,491.25

Diversion of Resources, Frustration of Mission, and Training 6,500.00

Future Monitoring of Respondent's Facilities \$10,000.00

Total: \$19,991.25

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 Respondents' conduct;
- Respondents' prior history of discrimination;
- Respondents' size and profitability;
- Respondents' cooperation or lack of cooperation during the investigation of the charge; and
- The effect Respondents' actions had upon Complainants.¹³

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

7. Applying the foregoing criteria to this case:

- Respondents' conduct was intentional, not accidental. Although they did not appear and testify at the hearing, the evidence supports a finding that Respondents knew they were committing illegal acts and continued to do so.
- The evidence substantiates that Respondent Brewer owns property worth at least \$319,140.00. (Comm. Ex. B)

¹³ This criteria is more appropriately considered when determining actual damages.

- The evidence substantiates that Respondent Brewer has been found to have violated Ohio's laws prohibiting discrimination in housing:
 - Final Order of the Ohio Civil Rights Commission, issued on November 18, 1999 in Complaint No. 8063, and
 - Final Order of the Ohio Civil Rights Commission issued on August 8, 2001 in Complaint No. 8723, for the unlawful intimidation and interference in the exercise of a housing right.¹⁴
- Additionally, Respondent Brewer has been adjudicated as a Judgment Debtor to the Ohio Civil Rights Commission in the amount of \$30,000.00, plus interest, from August 8, 2001 in Case No. 2002 CV 00999, in the Court of Common Pleas, Montgomery County, Ohio.
- The above referenced conduct of Respondents Brewer and Moore evidences a blatant disregard for the Commission's process and lack of respect for the law.
- Respondents' record shows a lack of cooperation with the Commission's investigations of charges of housing discrimination against Respondents.

¹⁴ R.C. 4112.05(G)(1)(c) provides the following the maximum award of punitive damages:

If the respondent has been determined by a final order of the commission or by a final judgment of a court to have committed two or more violations of division (H) of section 4112.02 of the Revised Code during the seven-year period immediately preceding the date on which a complaint was issued pursuant to division (B) of this section, punitive damages in an amount not to exceed fifty thousand dollars.

8. Based on this and the foregoing discussion, the ALJ recommends Respondent Brewer be assessed punitive damages in the amount of \$50,000.00 for Complainants Douglas and Mindy Watson and \$50,000.00 for MVHFC for a total amount of \$100,000.00. Further, that Respondent Moore be assessed punitive damages in the amount of \$5,000.00 for Complainants Douglas and Mindy Watson and \$5,000.00 for MVFHC for a total of \$10,000.00.

ATTORNEYS' FEES

9. The Commission is entitled to attorney's fees. R.C. 4112.05(G)(1); *Schoenfelt, supra*, at 386. The parties shall present evidence in the form of affidavits in support of an award of attorney's fees.

10. Affidavits provided by Principal Assistant Attorney General Marilyn Tobocman and Assistant Attorney General Terra L. Colvin support the following award of attorneys' fees: \$6,250.00. The hourly rate charged was supported by an affidavit from Stephen M. Dane, Esq., a partner with Cooper & Walinski, who is admitted to practice in the United States District

Court for the Southern District of Ohio and has served as lead counsel in fair housing cases in Dayton, Ohio.

11. Meanwhile, any objections to this report should be filed pursuant to the Ohio Administrative Code.

ADDITIONAL RELIEF

12. R.C. 4112.05(G)(1) provides in pertinent part that the Commission, if it finds a violation of the statute, may order a respondent “to take any . . . affirmative or other action that will effectuate the purposes of this chapter.” In cases such as this, it is not uncommon to require respondents who have violated the fair housing laws, to receive training on those laws from a non-profit fair housing agency. Therefore, the ALJ recommends that the Commission order Respondents to receive such training at Respondent Brewer’s expense.

13. It is also not uncommon to ensure that future tenants are protected from a landlord who has demonstrated a propensity to violate the fair housing laws. Thus, the Commission’s request that Respondents include

an equal housing opportunity statement in all advertisements, rental applications and agreements and other documents used by Respondents is not unreasonable. In addition to the statement suggested by the Commission in their brief, I recommend Respondents also include in boldface type at the end of that first sentence a statement regarding the prohibition against retaliating against any person who files a charge with the Commission or who participates in a Commission investigation. (See Appendix A)

14. In addition, respondents who have demonstrated a propensity to violate the fair housing law should be monitored. In this case, Respondents should notify the Commission every time the tenancy of one of the units changes, whether by eviction or expiration of a lease. The Commission should be notified about the circumstances surrounding the expiration of the tenancy. The Commission should be notified about the race, sex and family composition of the occupants and also about the race, sex and family composition of the new tenants, along with a list of the applicants and pertinent information about those applicants so the Commission can make comparisons

to ensure that the fair housing laws are not being violated in the future by Respondents Brewer and Moore.

15. The familial status provision was added to the Ohio Revised Code, effective June 30, 1992. Absent evidence to the contrary, the ALJ will assume that Respondent Brewer has been collecting at least per year illegally from half of his tenants for the past seven years. At 12 units x 12 months a year at \$22.50 (the charge of one and a half children times (x) seven years), that amount would be equal to \$22,580.00.¹⁵

16. Accordingly, Respondent Brewer is also ordered to pay MVFHC \$30,000.00 for a fund to be placed in an interest-bearing account to reimburse the affected tenants and for administration costs associated with the fund.

¹⁵ (Comm. Br. 14)

RECOMMENDATIONS

For all the foregoing reasons, it is recommended in Complaint Nos. 9382 and 9391 that:

1. The Commission issue Cease and Desist Orders prohibiting Respondents from charging any surcharge for minor children and making preferences for potential renters on the basis of race in the provision of housing accommodations;

2. The Commission order Respondents Brewer and Moore to pay the following:

- (a.) Complainants Douglas and Mindy Watson: \$11,738.57 in actual damages (plus interest at the maximum rate allowed by law) and \$55,000.00 in punitive damages, and
- (b.) MVFHC: \$19,991.25 in actual damages (plus interest at the maximum rate allowed by law) and \$55,000.00 in punitive damages, and \$30,000.00 to be placed in an interest-bearing account to reimburse tenants who were discriminated against by Respondent's illegal surcharge.

3. The Commission order Respondents Brewer and Moore pay the Office of the Ohio Attorney General reasonable attorneys' fees in the amount of \$6,250.00;

4. The Commission order Respondents Brewer and Moore to attend a training course on fair housing law sponsored by a fair housing agency at Respondent Brewer's expense;

5. The Commission order Respondent Brewer to use equal housing opportunity notices similar to the one set out in *Appendix A*; and

6. The Commission order Respondent Brewer to report to the Commission's Compliance Department for the next three years as set out in the ALJ's Report.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

April 26, 2004

EQUAL HOUSING OPPORTUNITY

It is illegal to discriminate against any person because of race, color, religion, sex, familial status (having one or more children), ancestry, disability, or national origin. Anyone who feels he or she has been discriminated against should contact:

Ohio Civil Rights Commission

40 West 4th Centre, Suite 1900

Dayton, OH 45402-1831

Toll Free: (888) 278-7101

Voice: (937) 285-6500

TTY: (937) 285-6500

Fax: (937) 285-6606

**IT IS ALSO ILLEGAL TO RETALIATE AGAINST ANYONE
WHO FILES A CHARGE WITH THE OHIO CIVIL RIGHTS COMMISSION
OR PARTICIPATES IN A COMMISSION INVESTIGATION.**

APPENDIX A