

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

**JOSEPH NATTEY, ET AL. AND
CHRISTINE RIDDICK, ET AL.**

Complainant

and

**FIRST REALTY PROPERTY
MANAGEMENT, ET AL.**

Respondent

Complaint No. 9243 (Nattey)
(AKR) H3021201 (25516) 021501
05 – 01 – 0670 – 8

Complaint No. 9244 (Riddick)
(AKR) H3022201 (25535) 022801
05 – 01 – 0665 – 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

Complaint, Notice of Election and Hearing No. 9243

(Complaint No. 9243)

Joseph Nattey filed a sworn charge affidavit on behalf of himself and his three children, Jelani, Ama, and Chiakwor, (Complainants), with the Ohio Civil Rights Commission (Commission) on February 15, 2001.

The Commission investigated and found probable cause that First Realty Property Management Ltd., Ronald and Sheri Snyder, Sams Investment, Inc., and Richard Walker (Respondents) engaged in unlawful discriminatory practices in violation of Revised Code (R.C.) 4112.02(H)(4) and (12).

The Commission issued Complaint No. 9243 on January 10, 2002.

Complaint No. 9243 alleged that the Respondents harassed the Complainants, subjected them to disparate terms and conditions of residency, and served them an eviction notice, for reasons not applied equally

to all persons without regard to their race, and in retaliation for having engaged in protected activity.

Complaint, Notice of Election and Hearing No. 9244

(Complaint No. 9244)

Christine, Maurice, and Destini Riddick and Royelle and Sarah Streeter (Complainants) filed a sworn charge affidavit with the Commission on February 28, 2001.

The Commission investigated and found probable cause that First Realty Property Management, et al. (Respondents) engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H).

The Commission issued Complaint No. 9244 on January 10, 2002.

The Complaint alleged that the Respondents harassed the Complainants, subjected them to disparate terms and conditions of residency, failed and refused to renew their lease, and served them an eviction notice, for reasons not applied equally to all persons without regard to their race.

The Respondents filed timely Answers to the Complaints, admitting certain procedural allegations, but denying that they engaged in any unlawful discriminatory practices.

A public hearing was held on August 20-21, 2003 at the Ocasek Government Center in Akron, Ohio.¹

The record consists of the previously described pleadings, a 513-page transcript, exhibits admitted into evidence at the hearing, and the post-hearing briefs filed by the Commission on November 10, 2003; by the Respondents on December 1, 2003; and the Commission's Reply brief, filed December 8, 2003.

¹ The Complaints were consolidated for purposes of hearing for convenience of the parties and judicial economy.

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 her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. 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 was supported or contradicted by reliable documentary evidence.

1. The Complainants filed sworn charge affidavits with the Commission on February 15, 2001 and February 28, 2001, respectively.

2. The Commission determined on October 18, 2001 that it was probable that the Respondents engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H).

3. The Respondents are providers of housing accommodations. They own and maintain such accommodations at the Williamsburg Court Apartments (WCA) at 1325 Apache Trail, Suite B, Stow, Summit County, Ohio.

4. The Complainants are Black.

5. Joseph Nattey and his wife and three children have lived at the WCA since 1990. Mr. and Mrs. Nattey divorced in 1999. Mrs. Nattey and their two daughters moved into a second unit in the WCA while their son continued to reside with Mr. Nattey.

6. The Riddicks have lived at the WCA since 1999.

7. During the Complainants' residencies at the WCA they were the only Black tenants.²

8. On November 8, 1999, Richard Walker (Respondent Walker) was hired as the property manager for First Realty Property Management, Ltd. (Respondent FRPM), which oversees the management of the WCA for Sams Investment, Inc. (Respondent Sams Investment). Respondent Walker managed other properties in addition to the WCA. Respondent Walker reported to William Robinson (Robinson), the Director of Property Management for Respondent FRPM.

9. Respondent Walker recommended Ron Snyder (Respondent Snyder) for hire as resident property manager.

10. Respondent Snyder first met Respondent Walker in the late 1990s. Respondent Snyder had done some work on Respondent Walker's house.

² At the time of the hearing the Natteys were still residing at the WCA.

11. On December 1, 2000, Respondent Snyder was hired as the resident manager for the WCA. Ron and Sheri Snyder took up residence in a unit in the WCA.

12. Prior to Respondent Snyder becoming the resident manager, Complainant Nattey wanted a satellite dish mounted on the outside of his second-story bedroom window.

13. One of Complainant Nattey's Caucasian neighbors already had a dish installed outside of their unit.

14. Jerry Cook, the former resident manager, told Complainant Nattey that he could have a dish installed on the building.³

15. Respondent Walker refused to permit Complainant Nattey to have the dish installed on the building and said that Complainant Nattey could only have a dish on a pole outside of his apartment.

³ Jerry and Lynn Cook began their employment with Respondent FRPM in 1983. The Cooks were involuntarily terminated from employment on October 5, 2000. (Joint Ex. 35)

16. Complainant Nattey filed a charge of race discrimination with the Commission on November 7, 2000.

17. Complainant Nattey received a three-day notice of eviction letter (taped to his door), dated February 12, 2001. The basis for the notice was that management had received complaints about his dog barking and that the dog debris was not being cleaned up.

18. The Riddicks also received a three-day notice of eviction letter dated February 12, 2001.

19. When Christine Riddick asked Respondent Walker why her lease was not being renewed, he said it was because she had too many cars. At the time that the Riddicks received the notice, they had five (5) vehicles.

20. In the WCA lease agreement, there is a restriction on the number of vehicles that residents can have per unit and park them in the parking

spaces belonging to the WCA. The restriction stated in the lease is two (2) vehicles per unit.⁴

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. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.⁵

⁴ Christine Riddick testified that Ed Guarino, the property manager prior to Respondent Walker, had sent her a notice about the number of cars exceeding the two- car limit. She stated that Mr. Guarino permitted her to have the additional cars when she suggested that she could use Mrs. Nattey's spaces, since Mrs. Nattey did not own an automobile.

⁵ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

1. The Commission alleged in both Complaints that the Respondents harassed the Complainants, subjected them to disparate terms and conditions of residency, and served them eviction notices, for reasons not applied equally to all persons without regard to their race, and with regard to Complainant Nattey, in retaliation for his having engaged in protected activity.

2. These allegations, if proven, would constitute violations of R.C. 4112.02(H)(4) and (12). These provisions provide in pertinent part that:

It shall be an unlawful discriminatory practice:

(H) For any person to do any of the following:

- (4) Discriminate against any person in the terms or conditions of . . . renting, . . . any housing accommodations, or in furnishing . . . services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations . . . because of [their] race; and
- (12) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed . . . any right granted or protected by division (H) of this section.

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(E) and (G).

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.

5. The same standards of proof that apply to employment discrimination cases generally apply to housing discrimination cases.⁶ Normally, these standards require the Commission to first prove a *prima facie* case of unlawful discrimination and ultimately show that the housing provider's articulated reasons for the housing decision were, more likely than not, a pretext for such discrimination. *Texas Dept. of Community Affairs v. Burdine*,

⁶ 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 10-3.

450 U.S. 248, 25 FEP Cases 113 (1981); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 5 FEP Cases 965 (1973).

6. However, if the Commission proves by a preponderance of the evidence that an impermissible factor “played a motivating part” in the housing decision, the burden of persuasion shifts to the housing provider to show that it, more likely than not, would have taken the same action even without the impermissible factor. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 49 FEP Cases 954 (1989) (plurality opinion).

7. To invoke *Price Waterhouse* and shift the burden of persuasion to the Respondents, the Commission may rely on circumstantial evidence that is “tied directly to the alleged discriminatory animus.” *Ostrowski v. Atlantic Mutual Ins. Cos.*, 59 FEP Cases 1131, 1139 (2d Cir. 1992). For example, the Commission may present evidence of recent conduct or statements by the Respondents that directly reflect the alleged discriminatory animus and have some connection to a potential, existing, or past landlord/tenant relationship. Such evidence may permit the fact finder to conclude that the alleged discriminatory animus was, more likely than not, a motivating factor

in the Respondents' actions toward the Complainants. *Id.*, at 1139-40; *Price Waterhouse, supra* at 277, 49 FEP Cases at (O'Connor J., concurring).

8. The evidence in this case shows that after inspecting Complainant Nattey's unit to determine the extent of repairs and painting needed, Respondent Walker told the Cooks that black people have oil on their skin so that when they touch the walls in the apartment it made them turn black.

9. Mrs. Cook also stated that she heard Respondent Walker say that "this place would be a lot better off if we could get the niggers out."

10. Although the Respondents attempted to discredit the Cooks' testimony by showing that they are more likely than not disgruntled ex-employees, I found their testimony regarding the statements made by Respondent Walker to be credible.

11. Additionally, when Complainant Nattey received the eviction notice for complaints about his dog, he was upset and asked Respondent

Snyder why he was being evicted. Complainant Nattey described his conversation with Respondent Snyder as follows:

A: He told me down the line when I was really getting ticked with this, all this because of the reason why they gave here—and he made the comment that—to the effect that he’s from West Virginia, and in West Virginia one group belongs on one side of the rail and the other one belongs on the other side. And that’s exactly what he told me.

(. . .)

A: And then he made the comment about, you know, that if we have ways to (. . .) you know, let you—move you out if we want to, and in West Virginia one side is for one group, the other side is for the other group. And that’s exactly what he told me.

(Tr. 257)

12. Although Respondent Snyder denies making any racially derogatory statements, one of the reasons given to Respondent Snyder by Robinson when he was involuntarily terminated as resident property manager was that he had received complaints that Respondent Snyder had made racially derogatory statements to either the Natteys or the Riddicks.

(Tr. 417)

13. The above mentioned credible evidence supports the finding that Respondent Walker held the stereotypical belief that all black persons destroy rental properties and that both Respondent Walker and Respondent Snyder harbored a discriminatory animus toward black persons during the Complainants' tenancy.

14. The Commission further introduced credible evidence that Respondent Walker treated the Complainants differently than similarly-situated white residents.

15. There were white residents who had dogs that Respondent Snyder had received complaints about: Mr. Gillium and Ms. Finley (Tr. 388-389, 444-445), the Neaffers (Tr. 353-354, 488-489), and Ms. Baca (Tr. 391). However, none of these residents received three-day notices from Respondent Walker.

16. Respondent Walker stated that the reason that other residents were not given three-day notices was that the complaints regarding those residents were not in writing.

17. Respondent Walker testified that when Ms. Colbert called to complain about the Natteys' dog, he told Ms. Colbert that he would need something in writing. (Tr. 457)

18. Respondent Walker personally approached Mr. Gillium and Ms. Finley because he observed that their dog far exceeded the weight limit, but they never received a three-day notice. (Tr. 483-484)

19. Christina Riddick complained to Respondent Snyder about Mr. Gillium's and Ms. Finley's dog running loose but the problem was never addressed because she continued to see the dog running loose after she made the complaint. (Tr. 148)

20. Although the Riddicks exceeded the car limitation set forth in the lease agreement, there were white residents who also exceeded the limit but did not receive eviction notices from Respondent Walker.

21. Respondent Snyder testified that he asked Respondent Walker if the car limit could be exceeded:

Q: (. . .) did Richard Walker ever tell you that they could only have more than two vehicles per unit if they had written permission to have more than two vehicles?

A: Yes, because I asked him . . . Well, being — just being — coming in as resident manager I wanted to make sure that what I was doing was correct. So I asked Mr. Walker how many vehicles were supposed to be in — per resident was supposed to be in the parking lots.

Q: And what did he say?

A: He said two. And — and I explained to him that some of the tenants had young children that drove, too — if it was possible that they could have an extra vehicle because of that. And he said yes, with written permission that they could because we were so limited to parking space there.

(. . .)

Q: The Riddicks were one set of tenants that had more than two cars per unit; correct?

A: Yes.

Q: But then there were others, as well as the Riddicks; is that correct?

A: There were others that had more than two cars, yes.

(Tr. 393-94)

22. After Respondent Walker advised the Riddicks that they needed to park their extra vehicles on the street instead of in the apartment parking lots, Christine Riddick began to divest the additional vehicles.⁷ She testified that she sold their van in March or April, and she did not renew the lease on the vehicle that she used for personal transportation at the end of the lease term in March. (Tr. 146)

23. A reasonable inference can be made that if Respondent Walker had communicated the policy to the Riddicks, he would have been aware of their plan to divest their extra automobiles.

24. The Respondents failed to meet their evidentiary burden to show that the same actions would have been taken against the Complainants without the impermissible factor of harboring a discriminatory animus toward black people.

⁷ Respondent Walker told Christine Riddick that she should park her additional vehicles on the street. Christine Riddick testified that when she parked her vehicle on the street she received a parking ticket. There is an ordinance that prohibits parking on the streets between 2:00 a.m. - 6:00 a.m. The ticket stated that the police had been notified about the violation due to a citizen complaint. When Christine Riddick talked to Respondent Walker about receiving the parking ticket, he told her that he had called the police. (Tr. 142)

25. The Respondents' actions toward the Complainants were intentional and, therefore, a violation of R.C. 4112.02 (H).

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. In fair housing cases, the purpose of an award of actual damages is to place the complainant "in the same position, so far as money can do it, as . . . [the complainant] 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.⁸ *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

3. In this case, the Commission presented evidence that the Respondents' discriminatory actions caused the Riddicks economic loss and emotional distress.

4. The Riddicks paid \$200 to move from the WCA to a house located on Bailey Road in Akron, Ohio.

5. The Riddicks paid \$800 a month rent, which was the amount of the mortgage payment on the house. The house is owned by Christine

⁸ 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

Riddick's parents. The rent at the WCA was \$600 per month. Over a period of seven months, from April of 2001 until October of 2001, the Riddicks paid a difference of \$200 per month.

6. The Riddicks testified that they had to store furniture that did not fit into the house on Baily Road at a cost of \$85 per month, with an up-front fee of \$15.

7. In October of 2001 the Riddicks moved into a house on Silver Lake Avenue which cost them \$700 per month. The moving expenses were \$321. The difference between what the Riddicks paid at the WCA and Silver Lake Avenue is \$100 per month.

8. The total amount of the Riddicks' moving expenses from April 2001 through August 2003 is \$3,181.⁹

(E.D. Mich. 1988).

⁹ The month that the hearing was held.

9. The ALJ credited Christina Riddick's testimony about the emotional distress that she suffered from the Respondents' discriminatory actions:

And the hardest part for me is that . . . I have children that—each community I've lived in since I've been in the Ohio area has been a predominantly Caucasian area. So I fight every day not to rub off my prejudice onto my children, because in my house at any time you can find several Caucasian children running around.

And so it's very hard for me, you know. And even when I deal with it at different functions—I deal with a lot of different families where—in most cases, at most sporting events and most things like that we're the only black family, you know.

And everything that goes on, I try not to say it looks like somebody's trying to commit racism or what are you trying to say when—when they say something to me, you know. So it has been very tough for me just in the fact that, like I said, there is—I deal with a lot of Caucasians.

And because of my non-trust . . . I usually always second guess, or look at everything they say to me and try to say okay, is there something there, or is this just the way that you think or psychologically it's messed me up a lot.

(Tr. 154)

10. The ALJ found Complainant Christina Riddick's show of emotion at the hearing to be sincere. In light of her testimony and the totality of the circumstances surrounding the Respondents' discriminatory actions, the ALJ recommends that the Riddicks receive \$5,000 for emotional distress.

11. The ALJ also observed the anger exhibited by Complainant Nattey when he testified about how his treatment by Respondent Walker and Respondent Snyder affected him. Complainant Nattey testified that he had lived at the WCA for over a decade and was being told to leave for reasons that were transparent to him. Although he complained about white residents who had dogs that were not in compliance with the policies articulated by Respondent Walker, they were not treated in the same manner that he was treated.

12. The ALJ recommends that the Natteys receive \$2,000 for emotional distress.

PUNITIVE DAMAGES

13. The purpose of an award of punitive damages pursuant to R.C. 4112.05(G) is to deter future illegal conduct. Ohio Admin. Code (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).

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

- The nature of the Respondents' conduct;
- The Respondents' prior history of discrimination;
- The Respondents' size and profitability;
- The Respondents' cooperation or lack of cooperation during the investigation of the charge; and
- The effect the Respondents' actions had upon the Complainants.¹⁰

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

¹⁰ This criteria is more appropriately considered when determining actual damages.

15. Applying the foregoing criteria to this case:

- Respondent Walker and Respondent Snyder acted intentionally, and their actions were rooted in discriminatory animus and racial stereotype. Robinson terminated Respondent Snyder because he had received complaints that Respondent Snyder had made racially derogatory comments to the Natteys and the Riddicks.
- The Commission did not present any evidence that there have been previous findings of unlawful discrimination against the Respondents;
- The record contains evidence regarding the number of rental units that the Respondents own in Ohio and the profitability of those units. (Stipulations of Fact 1 – 10)
- The Commission did not present any evidence at the hearing regarding the Respondents' cooperation or lack of cooperation during the investigation.

16. Based on the foregoing discussion, the ALJ recommends that Respondent FRPM be assessed punitive damages in the amount of \$6,000,¹¹ Respondent Walker in the amount of \$3,000, and Respondent Snyder in the amount of \$1,000.

¹¹ Robinson testified that Respondent Snyder was terminated because of complaints received that Respondent Snyder had made racially derogatory statements to the Riddicks and the Natteys.

ATTORNEY'S FEES

17. 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.

18. 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 the Respondents. The Respondents may respond with counter-affidavits and other arguments regarding the amount of attorney's fees in these cases.

19. 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 30 days after the ALJ's Report is adopted. The Respondents may respond to the Commission's Application for Attorney's fees within 30 days from its receipt of the Commission's Application for Attorney's Fees.

20. 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 the attorney's fees.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 9243 and Complaint No. 9244 that:

1. The Commission order the Respondents to cease and desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code;
2. The Commission order that the Respondents pay actual damages in the amount of \$8,181¹² to the Riddicks and \$2,000 to the Natteys;

¹² The month that the hearing was held.

3. The Commission order that the Respondents be assessed punitive damages as follows: Respondent FRPM an amount of \$6,000,¹³ Respondent Walker in the amount of \$3,000, and Respondent Snyder in the amount of \$1,000.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

February 10, 2005

¹³ Robinson testified that Respondent Snyder was terminated because of complaints received based on Respondent Snyder having made racially derogatory statements to the Riddicks and the Natteys.