

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

CHARLES JONES

Complainant

v.

**MICHAEL BLUMER AND
BARBARA BLUMER**

Respondents

Complaint No. 9841
(AKR) H3081104 (28705) 042304
05 – 04 – 1416 – 8

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

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ALJ'S REPORT BY:

Denise M. Johnson
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INTRODUCTION AND PROCEDURAL HISTORY

Charles Jones (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on August 30, 2004.

The Commission investigated and found probable cause that Michael Blumer and Barbara Blumer (Respondents) engaged in unlawful discriminatory practices in violation of Revised Code Section (R.C.) 4112.02(H)(12).

The Commission issued a Complaint, Notice of Hearing, and Notice of Right of Election on March 17, 2005.

The Complaint alleged that Respondents intimidated Complainant by subjecting him to unwelcome and unwanted acts of racially-motivated harassment including, but not limited to, damage to personal and real property, the use of racially offensive language and epithets, and the depositing of dead animals on his property.

The Complaint further alleged that Respondents' actions had the purpose or effect of attempting to coerce, intimidate, threaten or interfere with Complainant in the exercise or enjoyment of the facilities, services or privileges in connection with the ownership, occupancy, and use of the housing accommodations and rights granted under R.C. 4112.02(H).

The Commission filed a Motion for Default on May 26, 2005.¹

A public hearing was held on October 21, 2005 at the Ocasek Government Building in Akron, Ohio. Respondents did not appear at the hearing.

The record consists of the previously described pleadings, a transcript consisting of 49 pages, exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on June 1, 2006. Respondents did not file a post-hearing brief.

¹ The Commission's Motion for Default was granted pursuant to an Order dated August 9, 2005.

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's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on August 30, 2004.

2. The Commission determined on February 3, 2005 that it was probable that Respondents engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H)(12).

3. The Commission attempted but failed to conciliate this matter by informal methods of conciliation.

4. In April of 2000 Complainant rented a house located at 938 Merton Avenue in Akron, Ohio.

5. Respondents lived next door at 942 Merton Avenue.²

6. About 2 to 4 weeks after Complainant moved in Respondent Michael Blumer and his son, Shawn, began calling Complainant “nigger” and other racially derogatory slurs.

7. Then, around mid-May of 2000, Shawn and Nadine Blumer began throwing garbage into Complainant’s yard.

² Respondents had two children living with them, Shawn and Nadine.

8. Complainant spoke with Respondents about the conduct of their children, but Respondent Michael Blumer denied that his children had engaged in such conduct. (Tr. 5-6)

9. Complainant's garage windows were broken in mid-to-late 2002. Also, a rock was thrown at Complainant's house. It was put into a cigarette pack, thrown at the house, and bounced off the living room window. The window was broken by the impact. (Tr. 7, 26-27)

10. Complainant purchased the property at 938 Merton Avenue in the latter part of 2002. (Tr. 27)

11. Between November 5, 2002 and January 8, 2003, rocks were used to break the windshield on Complainant's car and caused dents to the body of the car.

12. Coincidentally, during the same time period Respondents' use of racial slurs directed toward Complainant escalated. (Tr. 8-9; Comm. Ex. 2)

13. In December of 2002 Respondents wrote racial epithets in the snow in Complainant's yard. Complainant also found a burned African-American Barbie doll in his yard. (Tr. 9-11; Comm. Exs. 3-4)

14. In November of 2003 Complainant heard a loud crashing sound around 4:00 a.m. and at the same time heard Respondent Michael Blumer cursing. The next morning Complainant discovered his fence had been damaged. (Tr. 11-13; Comm. Exs. 5-6)

15. In December of 2003 Complainant discovered his car had again been damaged while it sat in his driveway. (Tr. 14; Comm. Exs. 7-8)

16. Complainant reported many of the incidents involving property damage and racial harassment to the police, who took reports but did not take any action to prevent the conduct that gave rise to Complainant's complaints. (Tr. 7-11, 14; Comm. Exs. 2-3, 5, 7)

17. In early 2004 Complainant saw there was additional damage to his fence.³ He went back to his car and saw nails had been strewn on the ground behind his car, so that if he had driven without picking them up they could have penetrated his tires. (Tr. 24-25; Comm. Ex. 16)

18. On March 6, 2004, Respondents' dogs began barking, and the barking woke up Complainant. After the dogs continued barking for about an hour, Complainant threw a firecracker into his own back yard in an attempt to get the dogs to stop barking.

19. Shawn Blumer then began screaming racial slurs and insults at Complainant.

20. Respondent Michael Blumer came over to Complainant's house and began pounding on his door, spitting on his window, screaming racial epithets, and threatening to kill Complainant.

³ Subsequent to this Complainant received an estimate on the repair work, which would cost \$1,050. (Comm. Ex. 18)

21. Complainant told Respondent Michael Blumer to leave but he refused, so Complainant grabbed a pistol and used it to scare him away.

22. Respondent Michael Blumer called the police, who arrested Complainant. (Tr. 15-17; Comm. Ex. 9)

23. One day in March of 2004 Complainant and Respondent Michael Blumer engaged in a verbal exchange of words during which time Respondent used racial slurs. The next day Complainant found a dead animal that had been thrown into his yard. (Tr. 17-18; Comm. Ex. 10)

24. During the spring of 2004 Complainant started the routine of regularly checking the perimeter of his property to see what new damage might have been done.⁴

⁴ Complainant continued making these checks even after the Blumers moved away. (Tr. 25-26)

25. During one of these checks he saw that a second set of nails had been poured at the edge of his driveway, near the sidewalk. If he had not seen them he would have driven over them and possibly damaged the tires on his car. (Tr. 25)

26. In May of 2004 further damage was done to Complainant's car with rocks. (Tr. 18; Comm. Ex. 11)

27. On July 4, 2004, Complainant saw Respondents and their friends shooting fireworks.

28. The next morning Complainant looked outside and saw that Respondents had fired bottle rockets at his house. Some were in the yard and others were on his front porch and the roof of his house. His porch suffered burn damage from the bottle rockets. (Tr. 20-21; Comm. Ex. 12)

29. Complainant began to worry that one day he might return home from work and find that his house had been burned down.

30. Complainant, who is divorced, stopped bringing his children to his house when he had custody because of concerns over what Respondents might do. (Tr. 21, 32)

31. A few days later Complainant saw that raw eggs had been thrown at his garage. (Tr. 22; Comm. Ex. 13)

32. In August of 2004 Complainant saw that Respondents had a large fire in their yard. Embers were leaping from the flames, and Complainant was concerned that they might ignite something.

33. Complainant asked Respondents to put out the fire but they refused, calling him racial slurs in response.

34. The next day Complainant found another dead animal in his yard. (Tr. 22-24; Comm. Exs. 14-15)

35. Throughout 2004 Respondents continued directing racial slurs at Complainant. There were also a number of incidents involving garbage and cigarette butts being thrown into Complainant's yard. (Tr. 20, 29) This type of conduct by Respondents continued throughout 2005.

36. There were also a couple of larger incidents that occurred in 2005. (Tr. 29)

37. In July of 2005 Respondents again had a large fire in their yard. This time Complainant called the fire department. A fire truck came out; Respondents were forced to extinguish the fire.

38. A day or two later Complainant came home and saw that a large amount of yellow paint had been hurled all over the front of his house. (Tr. 28-29; Comm. Ex. 27)

39. In the latter part of 2005 human feces were thrown onto Complainant's front porch. (Tr. 30)

40. In 2005 Respondents moved out of 942 Merton Avenue. No other vandalism incidents to Complainant's real or personal property occurred after that time. (Tr. 30-31)

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.⁵

1. The Commission alleges in the Complaint that Respondents intimidated Complainant, threatened him, and otherwise interfered with Complainant's quiet enjoyment of his home on the basis of race.

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

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:

(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 or having aided or encouraged any other person in the exercise or enjoyment of, 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(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.⁶ It is also

⁶ Section 3617 of Title VIII is substantially the same as R.C. 4112.02(H)(12). See 42 U.S.C. 3617.

appropriate to refer to the regulations of the Department of Housing and Urban Development (HUD), the federal agency charged with enforcement of Title VIII.

5. Like its federal counterpart, a broad range of activities can constitute a violation of R.C. 4112.02(H)(12). Among other things, this provision prohibits acts that threaten, intimidate, or interfere with persons (and their associates) in their enjoyment of housing accommodations because of their race. *See HUD Regulations, 24 C.F.R. 100.400(c)(2).*

6. The evidence in this case shows that Respondents engaged in a campaign of intimidating and threatening behavior toward Complainant, and otherwise interfered with the quiet enjoyment of his home because of his race. (*See Findings of Fact.*) Complainant testified credibly about events that occurred during the time Respondents occupied the residence at 942 Merton Avenue.

7. In summary, Respondents threatened Complainant, intimidated him, and otherwise interfered with Complainant's quiet enjoyment of his home. Respondents' actions, which were racially motivated, violated R.C. 4112.02(H)(12). Therefore, Complainant is entitled to relief.

DAMAGES

8. 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

9. 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. *Steele v. Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973). 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).

10. In this case, the evidence shows that Respondents damaged Complainant's fence. Complainant received an estimate of \$1,050 for the repair. Therefore, Complainant is entitled to \$1,050 from Respondents for the cost to repair his fence.

11. Complainant also gave credible testimony regarding the impact of five years of harassment, which included damages to his personal property and real estate. Complainant testified about the extreme anxiety that he suffered from Respondents' actions. His regular search of the perimeter of his property, waking up in the middle of the night to look out the windows,

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. ¶25,037 at ¶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).

and his unwillingness to bring his children to his house speak volumes about the emotional stress and anxiety that he suffered.

12. Complainant testified about how Respondents' conduct affected him psychologically when dealing with his peers at work.⁸ He testified that, in order to keep functioning at work, he had to internalize his anxiety. (Tr. 36)

13. Complainant testified about a certain level of paranoia that he began to experience after living through the harassment by Respondents:

Judge Johnson: Did it impact your interactions with your peers at work, or...

Mr. Jones: I would say so. Even to a certain extent, even now, still.

Judge Johnson: In what ways?

Mr. Jones: Other problems have been exacerbated. I am looking at racial issues now. I have always been keenly aware of them but now I look even closer now because there are certain things on my job that I am looking at and I am wondering is this racial or is it just me. I am not even sure anymore, a lot of time.

(Tr. 36)

⁸ Complainant attended Alabama State University and received a B.A. in Journalism. Complainant moved back to Akron and began his career in journalism at the *Akron Beacon Journal*. He currently works at the *Cleveland Plain Dealer* as a sports copy editor.

14. The ALJ credited Complainant's testimony and sincerity about the emotional distress he suffered from Respondents' actions. In light of Complainant's testimony and the totality of the circumstances surrounding Respondents' actions, the ALJ recommends the Commission award Complainant \$40,000 for his emotional distress.

PUNITIVE DAMAGES

15. The purpose of an award of punitive damages pursuant to R.C. 4112.05(G) is to deter future illegal conduct. Ohio Adm. 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. *Shoenfelt 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).

16. 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 Complainant.⁹

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

17. Applying the foregoing factors to this case:

- Respondents' actions were intentional, malicious, and racially motivated;
- The Commission did not present any evidence that there have been previous findings of unlawful discrimination against Respondents;
- Respondents are not providers of housing accommodations. Therefore, the factors relating to size of housing accommodations and profitability are inapplicable in this case; and
- The Commission Investigator testified that Respondents did not cooperate during the investigation.

18. Based on the foregoing discussion, the ALJ recommends that Respondent Michael Blumer be assessed \$10,000 in punitive damages.

⁹ This factor is more appropriately considered when determining actual damages.

ATTORNEY'S FEES

19. The Commission's counsel is entitled to attorney's fees. R.C. 4112.05(G)(1); *Shoenfelt, 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.

20. 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 Respondents. Respondents may respond with counter-affidavits and other arguments regarding the amount of attorney's fees in this case.

21. 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. Respondents may respond to the Commission's Application for Attorney's fees within 30 days from their receipt of it.

22. Meanwhile, any Objections to this report should be filed pursuant to the O.A.C. 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 No. 9841 that:

1. The Commission order Respondents to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;

2. The Commission order Respondents to pay Complainant actual damages in the amount of \$41,050; and

3. The Commission order Respondents to pay Complainant punitive damages in the amount of \$10,000.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

September 25, 2006