OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

GENE ANN MOORE

Complainant

v.

REMICK RAMSEY AND
RHONDA RAMSEY NOBLE

Respondents

Complaint No. 08–HOU–CIN–33128
CIN H5 (33128) 12182007
22A–2008–01565F

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

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Respondents

ALJ'S REPORT BY:

Denise M. Johnson
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Gene Ann Moore
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Complainant

INTRODUCTION AND PROCEDURAL HISTORY

Gene Ann Moore (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (the Commission) on December 18, 2007.

The Commission investigated and found probable cause that unlawful discriminatory practices had been engaged in by Remick Ramsey and Rhonda Ramsey Noble (Respondents) in violation of Revised Code Section (R.C.) 4112.02(H).

The Commission issued a Complaint, Notice of Hearing, and Notice of Right of Election on September 11, 2008. The Commission subsequently attempted conciliation. The matter was scheduled for hearing after conciliation efforts failed.

The Complaint alleges that Respondents made housing unavailable to Complainant because of her religion and disability and

discriminated against Complainant in furnishing services in connection with the occupancy of housing accommodations because of her religion and disability in violation of R.C. 4112.02(H)(1)and (4).

Respondents did not file an Answer to the Complaint.

A public hearing was held on December 8, 2009 at the Center for Economic Opportunity, 101 E. East Street, Washington Court House, Ohio.

The record consists of the previously described pleading, a transcript consisting of 97 pages of testimony, exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on September 20, 2010.

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 December 18, 2007.

2. In a letter dated June 12, 2008, Respondents were notified of the Commission's probable cause finding that Respondents engaged in discriminatory practices 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. Complainant and her ex-husband rented the house at 7123 State Route 753 S.E., Greenfield, Ohio in January 2006. (Tr.42-43)

5. Complainant has a bone disease called condromalacia, which is a deterioration of the joints. She also has several other degenerative disc diseases causing her joints and bones to deteriorate, making it very difficult for her to lift, walk or climb stairs. (Tr. 31-32)

6. Complainant suffers from asthma, which is aggravated by temperature changes and stress. (Tr. 32)

7. Because of the physical limitations caused by Complainant's conditions she is no longer able to work and receives Social Security Disability payments. (Tr. 33)

8. Complainant receives a rent subsidy from the Fayette Metropolitan Housing Authority (FMHA).

9. In 2007 Complainant started taking care of two children, Ava (1) and Trenton (8) who also lived in the house. (Tr. 37-38)

10. In early September 2007 Respondent Remick Ramsey (Respondent Ramsey) bought 7123 S.R. 753 and an abutting property at 7101 S.R. 753.

11. Shortly thereafter, his mother, Respondent Rhonda Ramsey Noble (Respondent Noble), moved into 7101 S.R. 753.

12. Monica Smith (Smith), the previous owner, informed Complainant that her rent would be the same. Smith transferred Complainant's deposit money to Respondent Ramsey. (Ex. 6)

13. Respondent Noble made several appointments with Complainant to discuss repairs that were needed to Complainant's house, but she failed to keep the scheduled appointments. (Tr. 51-52)

14. Respondent Noble arrived at Complainant's house unannounced when Complainant was meeting with her case-worker. Complainant could not meet with Respondent Noble at that time. Respondent Noble handed Complainant a revised lease to sign. (Tr. 52, 54-55)

15. Among other things, the revised lease included a statement requiring a deposit and a clause about liability insurance.

16. Complainant was concerned because she had a letter from her previous landlords that her deposit had been transferred to Respondent Ramsey.

17. Complainant wrote a letter to Moore stating her concerns and that she would not sign the revised lease "as is". (Ex. 1)

18. The next time Respondent Noble came to Complainant's house she toured the house to see what repairs needed to be done.

19. Complainant is Catholic and has crucifixes hanging on the walls.

20. Respondent Noble commented, "you have a lot of God stuff in your house." (Tr. 59)

21. When Complainant explained that she was Catholic Respondent Noble said:

> My understanding of the Catholic religion is it's pretty cool because you can go out and party all weekend long and you can go to confession on Sunday morning and you can get forgiven and you're good all week.
>
> (Tr. 60)

She also stated that "Catholics are the only religion that they encourage you to be a wino." (Tr. 60)

22. Both housing units share one water well which is run by an electric pump and is located and controlled in the house where Respondent Noble lives. (Tr. 43-44)

23. A fee for water was not a part of Complainant's lease agreements.

24. In October 2007 Respondent Noble told Complainant that she did not think it was fair that she had to pay the entire electric bill when Complainant was using her water for free. (Tr. 68-69)

25. Respondent Noble then asked Complainant to pay an additional $100.00 per month "under the table" for water and electric. (Tr. 69-70)

26. Complainant said she could not afford to pay that kind of extra money monthly.

27. Respondent Noble responded by saying, "If you was a Christian woman like you claim to be, then you would just give me the money, you wouldn't expect other people to pay your bills." She also added, "Now I know I'll never have another Catholic live in my house." (Tr. 70)

28. Complainant was upset by Respondent Noble's behavior and went to see Nancy Reed (Reed) who is a case worker for the FMHA.

29. Reed pulled out the lease she had on file. Complainant's forged signature was on the lease.

30. Reed was able to confirm that Complainant's signature was forged. (Tr. 21-22)

31. During the weekend around Veterans' Day in November 2007, Respondent Noble shut off Complainant's water supply for nearly seventy-five percent (75%) of the weekend. (Tr. 74-75)

32. Complainant called the police. When the police arrived Respondent Noble turned the water on.

33. After the police left, Respondent Noble turned the water off again. (Tr. 74-75)

34. Again Complainant called the police but the police would not come out again because they said it was a civil matter. (Tr. 75)

35. In order to have water, Complainant purchased 25-30 jugs from the grocery store. She also took the children to the YMCA to bathe and to use the facilities. (Tr. 75-76)

36. Complainant prepared a document releasing her from the lease which Respondent Ramsey signed on November 13, 2007.

37. In the document Complainant agreed to pay Respondent Ramsey $100.00 to settle any claims that he might have about her use of electricity and water. (Ex. 4)

38. Complainant was not able to move immediately as she needed to save enough money for the move.

39. Respondent Noble continued to shut off Complainant's water and create problems which required Complainant to purchase water at an additional cost of $300.00.

40. Complainant saved enough money to move out in January 2008.

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 that Respondents made housing unavailable to Complainant because of her religion and disability and discriminated against Complainant in furnishing services in connection with the occupancy of housing accommodations because of her religion and disability in violation of R.C. 4112.02(H)(1)and (4).

2. This allegation, if proven, would constitute a violation of R.C. 4112.02(H)(1) and (4) , which provides, in pertinent part, that:

It shall be an unlawful discriminatory practice:

(H) For any person to:

(1) Refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of (...), religion, (...), disability, (...);

(4) Discriminate against any person in the terms or conditions of selling, transferring, assigning, 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, including the sale of fire, extended coverage, or homeowners insurance, because of (...), religion, (...), disability, (...);

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.[1] 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 based on the individual's disability by proving that:

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

(1) Complainant is a member of a protected class;

(2) Complainant was a qualified renter;

(3) Respondent evicted Complainant; and

(4) Respondent evicted Complainant under circumstances, which give rise to an inference of discrimination.

Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 at 253 (1981).

6. The Commission introduced credible evidence that Complainant had a very good rental history, from the testimony of her previous employer and the FMHA. (Tr. 11, 14, Ex. 6)

7. Complainant is a practicing Catholic and displayed religious symbols (crucifixes) throughout her home.

8. Complainant has a bone disease called condromalacia, which is a deterioration of the joints. She also has several other degenerative disc diseases causing her joints and bones to deteriorate making it very difficult for her to lift, walk or climb stairs. (Tr. 31-32)

9. Complainant suffers from asthma, which is aggravated by temperature changes and stress. When Complainant has an asthma attack, she is unable to breath. It can take up to eight (8) minutes to restore her breathing to normal. (Tr. 32)

10. However, the evidence does not support a determination that Respondent's conduct was motivated by Complainant's disability.

11. Complainant was only able to specifically recall a couple of comments that Respondent made about her legs or her back. (Tr. 86)

12. Stray remarks that are vague and ambiguous do not have any probative value.

> It is well established in the Sixth Circuit that isolated and ambiguous comments are too abstract, in addition to being irrelevant and prejudicial, to support a finding of (...) discrimination.
>
> *Grant v. Harcourt Brace*, 77 FEP Cases 1068, 1076 (D.C. S.Ohio 1998) (citations and quotations omitted).

13. On the other hand, when Respondent Noble was in Complainant's presence she made numerous derogatory and belittling comments about Complainant's religion, going so far as to say she would never rent to a Catholic again.

14. The Commission introduced credible evidence Respondent Noble's comments showed an animus toward Complainant because of her religion.

15. The credible evidence in the record also supports a determination that Complainant was constructively evicted.

> A constructive eviction occurs when the "acts of interference by the landlord compel the tenant to leave, and ... [s]is thus in effect disposed, though not forcibly deprived of possession."
>
> *Sciascia v. Riverpark Apts.*, (1981), 3 Ohio App. 3d 164, 166, 3 Ohio B. 188, 444 N.E. 2d 40; *citing Liberal Savings & Loan Co. v. Frankel Realty Co.*, (1940), 137 Ohio St. 489, 498-499, 19 Ohio Op. 170, 30 N.E.2d. 1012.

16. The disparaging comments made by Respondent Noble to Complainant about Complainant's religion, forging Complainant's signature on the lease agreement, turning off Complainant's water which created harsh and unbearable living conditions for Complainant and her family, made Complainant feel that she had no other choice but to leave the premises.

17. Respondent Noble acted as the agent for Respondent Ramsey in that she managed the property by delivering the lease agreement and evaluated the property to determine what repairs needed to be done.

> The discriminatory conduct of an agent, such as a property manager, is attributed to the owner because the duty not to discriminate cannot be delegated.
>
> *Alexander v. Riga*, (3rd Cir. 1974), 503 F.2d 735.

18. I find that Complainant was the victim of illegal housing discrimination because of her religion and that she was constructively evicted. Complainant is entitled to relief as a matter of law.

DAMAGES

19. 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

20. 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.[2] *Seaton v. Sky Realty Co., Inc.,* 491 F.2d 634, 636 (7th Cir. 1974).

21. In this case, the Commission presented evidence that Respondent's discriminatory actions caused Complainant economic loss.

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[2] 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, 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).

22. Complainant incurred moving expenses as follows:

- Moving truck: $ 128.00
- Movers: $ 250.00
- Babysitter: $ 75.00

23. The Commission also presented evidence that Respondent's discriminatory actions humiliated Complainant and caused her emotional distress. The following is one example of the testimony given by Complainant who testified she was humiliated and embarrassed when she had friends and family come over when her water was turned off:

> Mr. Jamieson: Were you embarrassed with how the place looked or how it smelled?
>
> Ms. Moore: Oh absolutely. Absolutely. You know Ava and she couldn't help it. She was a year old you know babies drop things, they spill things and I had a shampooer. I have a carpet shampooer you know when that happens you plug it in and you go over it a few times to suck up the milk and it's gone. You know or the juice or whatever it may be um I couldn't do that. If Ava seeped out of her diaper onto the floor um or you know she spilled something. You know they spilt soup because the kitchen was carpeted so if something got spilled I couldn't clean it

> up, so the milk just sat there and it soured and it stunk and I was embarrassed and humiliated to have anybody in my house because it stunk so bad. I couldn't even do general cleaning. I had laundry piled up to the ceiling and it was you know soiled laundry from Trenton, urinated and soiled laundry from the baby, you know, and that smell you know, after a couple of days you know it sinks into everything.
>
> (Tr. 84)

24. Complainant is awarded $5,543.00 in actual damages.

PUNITIVE DAMAGES

25. 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).

26. 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 the Respondent's actions had upon Complainant.[3]

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

27. The factors considered in the instant case by the ALJ in determining punitive damages is the egregiousness of Respondent Noble's conduct and the humiliation suffered by Complainant as a result of Respondent Noble's conduct.

[3] This criteria is more appropriately considered when determining actual damages.

28. Based on the foregoing discussion, the ALJ recommends that Respondent be assessed punitive damages in the amount $10,000.00.

ATTORNEY'S FEES

29. 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.

30. In order to create a record regarding attorney's fees, the Commission's counsel should file affidavits from plaintiffs' attorneys in Fayette 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.

31. 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 the receipt of the Commission's Application.

32. 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 No. 08-HOU-CIN-33128 that:

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

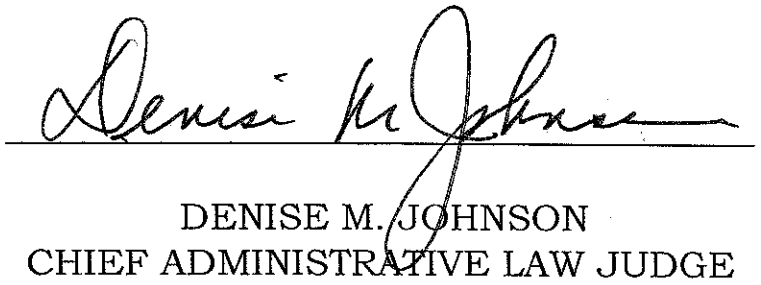
2. The Commission order Respondents to pay Complainant $5,543.00 in actual damages; and

3. The Commission order Respondents to pay Complainant $10,000.00 in punitive damages.

4. The Commission order Respondents, within fix (6) months of the date of the Commission's Final Order, to receive training regarding the anti-discrimination fair housing laws of the State of

Ohio. As proof of its participation in fair housing training, Respondents shall submit certification from the trainer or provider of services that Respondent has successfully completed the training; and

5. The Commission order Respondents, within seven (7) months of the Commission's Final Order, to submit its Letter of Certification of Training to the Commission's Compliance Department.



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

June 11, 2012

Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners
Leonard J. Hubert., Chair
Stephanie M. Mercado, Esq.
William Patmon, III
Tom Roberts
Rashmi N. Yajnik

G. Michael Payton, Executive Director

October 24, 2012

Gene Ann Moore
P.O. Box 875
Washington Courthouse, OH 43160

Re: Gene Ann Moore v. Remick Ramsey & Rhonda Ramsey Noble
CINH5(33128)12182007
22A-2008-01565-F
Complaint No. 08-HOU-CIN-33128

Enclosed is a certified copy of the Commission Order issued in the above captioned matter. This Order requires Respondent to Cease & Desist from any and all practices involving the violation of Chapter 4112 of the Ohio Revised Code.

Respondent is herewith notified of its right to obtain judicial review of this Order, as set forth in Revised Code § 4112.06.

FOR THE COMMISSION

Desmon Martin / cjs

Desmon Martin
Director of Enforcement and Compliance

DM:cjs

Enclosure

Lori A. Anthony, Esq. – Chief, Civil Rights Section
Denise M. Johnson, ALJ – Division of Hearings
Compliance [Martin – Kanney – Woods]
Remick Ramsey, Rhonda Ramsey Noble

Certified No. 7003 1680 0007 0163 1650 [Gene Ann Moore]
Certified No. 7003 1680 0007 0163 1667 [Remick Ramsey, Rhonda Ramsey Noble]

John Kasich, Governor

Gene Ann Moore	)	
	)	
Complaint,	)	
	)	COMPLAINT NO: 08-HOU-CIN-33128
v.	)	
	)	
Remick Ramsey & Rhonda Ramsey Noble	)	
	)	
Respondents.	)	

CEASE AND DESIST ORDER

This matter came before the Commission upon Complaint and Notice of Hearing No. 08-HOU-CIN-33128, issued September 11, 2008; the official record of the public hearing held on December 8, 2009, before Denise M. Johnson, the duly appointed Chief Administrative Law Judge; all exhibits therein; the post-hearing brief submitted by the Commission on September 20, 2010; and the Chief Administrative Law Judge's Findings of Fact, Conclusions of Law and Recommendations dated June 11, 2012. Respondents did not file an answer or attend the hearing. The Ohio Attorney General's Office waived its claim for attorney fees.

Complaint 08-HOU-CIN-33123 alleges that Respondents made housing unavailable to Complainant because of her religion and disability, and that they discriminated against her in furnishing services in connection with the occupancy of housing accommodations because of her

religion and disability in violation of R.C. 4112.02(H)(1) and (4). After the public hearing, the Chief Administrative Law Judge found that the evidence did not support a determination that the Respondents' conduct was motivated by Complainant's disability. However, she did find credible evidence that Complainant was the victim of illegal housing discrimination because of her religion and that she was constructively evicted. Accordingly, the Chief Administrative Law Judge recommended that the Commission find that Respondents engaged in unlawful conduct and recommended that Respondents cease and desist from their discriminatory conduct, and that Complainant be awarded damages.

With all matters now before it and carefully considered, the Commission hereby adopts and incorporates, as if fully rewritten herein, the findings of fact, conclusions of law, and recommendations contained in the Chief Administrative Law Judge's Report and specifically orders Respondent to:

(1) Cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;

(2) pay Complainant $5,543.00 in actual damages,

(3) pay Complainant $10,000.00 in punitive damages, and

(4) receive training regarding the anti-discrimination fair housing laws of the State of Ohio, and provide proof of such training within six months of the Commission's Final Order.

This ORDER issued by the Ohio Civil Rights Commission on this 24th day of October, 2012.

Tom Roberts

Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.

Desmon Martin
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: 10/18/2012