



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Tina M. Whitenburg & Fair Housing Center

Complainant,

**Complaint Nos. 11-HOU-TOL-34510
& 11-HOU-TOL-34477**

v.

John A. Galbraith

Respondent.

OHIO
CIVIL RIGHTS
COMMISSION

G. Michael Payton
Executive Director

Commissioners
Leonard Hubert, Chairman
Stephanie Mercado, Esq.
Lori Barreras
William W. Patmon, III
Tom Roberts

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

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Tina Whitenburg
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John Galbraith
117 West Wayne Street
Maumee, OH 43536
Respondent

ALJ'S REPORT

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Ohio Civil Rights Commission

Board of Commissioners

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April 17, 2014

**Tina M. Whitenburg &
Fair Housing Center of Toledo**
432 North Superior Street
Toledo, OH 43604
Complainants

John A. Galbraith
117 West Wayne Street
Maumee, OH 43537
Respondent

**Re: Tina M. Whitenburg and Fair Housing Center of Toledo v.
John A. Galbraith, 11-HOU-TOL-34510 / 11-HOU-TOL-34477**

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty three (23) days from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be **received** by the Commission no later than **May 12, 2014**. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.

*Please send the original Statement of Objections to: **Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414.** All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

Desmon Martin / rb

Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Lori A. Anthony, Section Chief - Civil Rights Section / Sharon Tassie, Principal Assistant Attorney General / G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel / Stephanie Bostos-Demers, Chief Legal Counsel

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INTRODUCTION AND PROCEDURAL HISTORY

Fair Housing Center of Toledo (FHCT) and Tina M. Whitenburg (Complainants) filed sworn charge affidavits with the Ohio Civil Rights Commission (the Commission) on April 1, 2011, and April 12, 2011, respectively.

The Commission investigated and found probable cause that unlawful discriminatory practices had been engaged in by John A. Galbraith (Respondent) in violation of Revised Code Section (R.C.) 4112.02(H)(1), (4), (12), and (19).

The Commission issued Complaints, Notice of Hearings, and Notice of Right of Election on September 8, 2011. The Commission subsequently attempted conciliation. The matter was scheduled for hearing after conciliation efforts failed.

Complaint No. 34510 alleges that Complainant is disabled and uses a service dog to alert her to oncoming seizures. Respondent refused to allow Complainant to keep her service animal in the apartment. On May 11, 2010 Respondent posted a notice to vacate on the door of Complainant's apartment. Respondent engaged in unlawful discriminatory practices in violation of 4112.02(H)(1), (4), (12), and (19).

Complaint No. 34477¹ alleges the Complainant FHCT diverted its resources and its mission to eliminate housing discrimination and was frustrated when it had to expend resources to counteract the Respondent's practice and policy which denies housing to individuals who are disabled and who request an accommodation in violation of 4112.02(H)(1), (4), and (19).

Respondent filed a timely Answer to the Complaint. The Respondent denied engaging in any unlawful discriminatory practices.

¹ Complaint No. 34477 alleges that Complainant FHCT conducted fair housing testing of Respondent's rental policies and practices on April 6, 2010. There is no evidence in the transcript that supports the allegation or a factual finding that Complainant TFHC conducted testing on April 6, 2010.

A public hearing was held on July 25, 2012, at the One Government Center in Toledo, Ohio.

The record consists of the previously described pleadings; a transcript consisting of 103 pages of testimony; exhibits admitted into evidence at the hearing; and the post-hearing brief filed by the Commission on September 18, 2012. The Respondent did not file a post-hearing brief.²

² The Commission filed a Motion To Consolidate Complaints No. 34510 and 34477 on February 21, 2012. The Motion was granted by the ALJ pursuant to an Order dated June 26, 2012.

FINDINGS OF FACT

The following Findings of Fact 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. Complainants filed sworn charge affidavits with the Ohio Civil Rights Commission (the Commission) on April 1, 2011, and April 12, 2011, respectively.

2. The Commission determined on May 19, 2011 it was probable that unlawful discriminatory practices had been engaged in by Respondent in violation of R.C. 4112.02(H).

3. The Commission attempted and failed to eliminate the alleged unlawful discriminatory practices by informal methods of conciliation. (Tr. 15-20, Comm. Exhs. 1 & 2).

4. Respondent is a provider of "housing accommodations" as defined by R.C. 4112.01(A)(10), maintaining such accommodations at 5211 Douglas Road, Toledo, Ohio.

5. Complainant Whitenburg's mother, Dorothy Whitenburg, rented the apartment at 5211 Douglas Road in March of 2010. (Tr. 32, Comm. Exh. 3)

6. The rent was \$460.00 per month and a \$466.00 security deposit.

7. Complainant Whitenburg has lived with her mother all of her life. (Tr. 25)

8. Complainant Whitenburg has suffered from epilepsy all of her life and takes medication for her condition. (Tr. 25)

9. Complainant Whitenburg's epilepsy causes her to have seizures. (Tr. 24)

10. Complainant Whitenburg has a service animal named Bear. Bear is a Pomeranian that she has had since he was eight (8) months old.³

11. Bear alerts Complainant Whitenburg and her mother when Complainant Whitenburg has seizures. (Tr. 24-25)

³On the date of the hearing Bear was ten (10) years old.

12. Complainant Whitenburg's mother is bedridden and Bear's alerts would give Complainant Whitenburg's mother the opportunity to contact 911.

13. When Respondent discovered that Complainant Whitenburg kept a dog in the apartment, he ordered it removed.

14. Complainant Whitenburg attempted to explain that Bear is an assistance animal but Respondent refused to consider Complainant Whitenburg's request to keep Bear in the apartment due to her medical condition.

(Tr. 26-26)

15. Complainant Whitenburg had to find another place for Bear to stay while she was considering her options. (Tr. 27)

16. The person that Complainant Whitenburg found to keep Bear was affiliated with an animal assistance organization and counseled Complainant Whitenburg to contact Complainant FHCT. (Tr. 29)

17. Complainant FHCT's mission is to ensure that individuals are able to make choices regarding the house and the neighborhood that they want to live in pursuant to state and federal housing laws. (Tr. 65)

18. Complainant FHCT investigates housing complaints made by individuals and, if necessary, diverts the resources of the organization toward counteracting actions by housing providers that are in violation of state and federal fair housing laws. (Tr. 65)

19. Karen Plocek (Plocek) is employed as an investigator for Complainant FHCT.

20. Plocek contacted Respondent by telephone on May 6, 2010 and attempted to discuss Complainant Whitenburg's complaint with Respondent, but he refused to listen. (Tr. 55)

21. Plocek sent Respondent a letter via certified mail dated May 7, 2010 which reiterated Complainant Whitenburg's request for accommodation. (Tr. 55-56, Comm. Exh. 4)

22. Complainant FHCT requested that Respondent respond to the letter by May 11, 2010.

23. On May 11, 2010 Respondent placed an eviction notice on Complainant Whitenburg's door. (Tr. 93)

24. Plocek advised Complainant Whitenburg to move Bear back into the apartment. Because of the eviction notice Complainant Whitenburg was afraid to bring Bear back. (Tr. 58)

25. Complainant Whitenburg and her mother moved out of the apartment May 19, 2011.

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 Respondent denied to Complainant Whitenburg the full use and enjoyment of its housing accommodations, for reasons not applied equally to all without regard to their disability status.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02(H)(1), (4),(12), and (19) which provides that it is an unlawful discriminatory practice for any person to:

(1) Refuse to (...) rent, lease, (...) housing accommodations, refuse to negotiate for the (...) rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of (...) disability, (...);

(4) Discriminate against any person in the terms or conditions of (...) renting, leasing, (...) any housing accommodations (...) in connection with the (...), occupancy, or use of any housing accommodations, (...) because of (...), disability, (...);

(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;

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;

3. O.A.C. 4112-5-07 which amplifies R.C. 4112.02(H)(19) sets forth that:

(C) Every disabled person who has an animal assistant or who obtains an animal assistant shall be entitled to keep the animal assistant on the premises purchased, leased, rented, assigned or subleased by such disabled person. (...)

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(E) and (G).

5. 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. 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). 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.

7. In this case, the Commission may establish a *prima facie* case of housing discrimination based on the individual's disability by proving that:

- (1) Complainant is disabled;
- (2) that the Respondent knew or should reasonably be expected to know of the disability;
- (3) that accommodation of the disability may be necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling;
- (4) that the accommodation is reasonable; and
- (5) that Respondent refused to make the requested accommodation. *Dubois v. Ass'n. of Apt. Owners*, 453 F.3d 1175, 1179 (9th Cir. 2006). 7.

8. After the Commission establishes a *prima facie* case of housing discrimination based on Complainant Whitenburg's disability, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason to rebut the presumption of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792(1973); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).

9. If Respondent successfully articulates a legitimate, non-discriminatory reason, the Commission must prove by a preponderance of the evidence that Respondent's articulated reason is a pretext for discrimination. *Id.*

10. Pretext may be proven either by direct evidence or circumstantial evidence. *Plumbers v. Steamfitters Joint Apprenticeship Committee v. Ohio Civil Rights Comm.*, 66 Ohio St. 2d 192, 198 (Ohio 1981).

11. First, the Commission must establish Complainant Whitenburg is disabled. R.C. 4112.01(A)(13) defines "disability" as:

(...) a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.

12. R.C. 4112.01(16)(a) defines "physical or mental impairment" to include any of the following:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; (...)

(iii) Diseases and conditions, including, but not limited to, orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer,

heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction, and alcoholism.

13. In determining whether an individual is substantially limited in a major life activity, it is necessary to look at the severity of the impairment, the duration or expected duration of the impairment, and the permanent or long-term impact resulting from the impairment. *Toyota Motor Mfg. Co., Inc. v. Williams* (2002) 534 U.S. 184, 196, citing 29 C.F.R. § 1630-2(j).

14. Complainant Whitenburg has epilepsy and has had that condition all of her life.

15. Complainant Whitenburg takes medication for her condition.

16. Complainant Whitenburg has seizures as a result of her epilepsy. Her condition is exacerbated by stress and anxiety. (Tr. 24)

17. Complainant Whitenburg's seizures interrupt her thought processes and physical control. (Tr. 46)

18. The Commission has established that Complainant Whitenburg is disabled.

19. The Commission established that Respondent knew about Complainant Whitenburg's disability when she tried to tell him her reasons for needing to keep Bear.

20. When Respondent found out that Complainant Whitenburg had a dog he told her that she had to get rid of it.

21. Complainant Whitenburg attempted to explain that the dog is an assistance animal but Respondent refused to listen or consider her request.

22. Complainant Whitenburg's request for an animal assistant as a therapy animal prescribed by her doctor to ameliorate the affects of her disability is a reasonable accommodation. The accommodation of non-service animals per se is not unreasonable under the FHA.

Janush v. Charities Hous. Dev. Corp., 169 F. Supp. 2d 1133, 1136 (N.D. Cal. 2000).

The housing authority violated the FHA by requiring a hearing impaired tenant to prove that the dog living with him had training in hearing assistance before an exception would be made to the authority's general "no pets" rule.

Green v. Hous. Auth. Of Clackamas County, 994 F. Supp. 1253, 1255-56 (D. Or. 1998).

A tenant with psychiatric disabilities could not be evicted for keeping an untrained cat in violation of a "no pets" policy when the companionship of the cat helped her to function.

Whittier Terrace Assocs. v. Hampshire, 26 Mass. App. Ct. 1020, 532 N.E. 12d 712 (1989).

Landlord may be required to accommodate a disabled tenant by allowing him to have a cat so long as the cat is necessary for him to use and enjoy the property due to his disability. *Crossroads Apartments Associates v. LeBoo* 152 Misc.2d 830 (1991).

23. Respondent represented himself pro se at the hearing. He graduated from the University of Michigan Law School, is a licensed attorney, and has been a landlord in Ohio for over sixty (60) years. (Tr. 72-73).

24. After Complainant FHCT sent a letter to Respondent he was aware of the obligations of landlords to reasonably accommodate disabled tenants. (Tr. 89, Comm. Exh. 8)

25. The Respondent admitted that current Ohio law may require landlords to permit tenants to have therapy animals, however he asserts as a defense the following:

Administrative Law Judge Johnson: There's allegations that you—your conduct is not accommodating Ms. Whitenburg when she requested a therapy animal which violates Revised Code 4112.02(H). I can't cite you the specific provision.

But so you said you spent some time in the legislature. You know that the State can regulate in certain areas, and that's one area that the Commission is saying is—there's regulation against the kind of conduct that they're alleging that you engaged in. I want to hear your response, Mr. Galbraith.

Mr. Galbraith: We, I didn't know about it, to begin with. I'm not surprised. Like I said, I knew about seeing eye dogs. I didn't know about therapy dogs until this case was brought to me. First experience with it.

Mr. Galbraith: In my written answer to the—one of the requests was I made the point, never in my 60 years being a landlord have I been provided evidence that an occupant, including the Claimant, needed an animal because of their physical or mental condition. It was new to me. I didn't know that.

I can't deny that there is, because it was certainly brought to my attention there is a rule. But I didn't know at that time. And nobody ever during that whole time has, or before then provided me any evidence that they needed a dog. (...) (Tr.75-76).

26. When a housing provider receives a request for a reasonable accommodation, he or she has an obligation to engage in a dialogue regarding the need and reasonableness of the request. *Jankowski Lee & Associates v. Cisneros* 91 F.3d 891, 895 (7th Cir. 1996).

27. If Respondent was skeptical about Complainant Whitenburg's disability it was the Respondent's duty to request documentation or open dialogue. *Id.* at 897

28. Even after Complainant Whitenburg had moved Bear from the apartment Respondent sent her an eviction notice.

29. Under the FHA, acts of intimidation, threats, and coercion can be more subtle than fire bombing, acts of physical violence, or burning crosses:

“Section 3617 is not limited to those who used some sort of “potent force or duress,” but extends to other actors who are in a position directly to disrupt the exercise or enjoyment of a protected right and exercise their powers with a discriminatory animus.” *Michigan Protection & Advocacy Serv. v. Babin*, 18 F.3d 337 at 349 citing *Stirgus v. Benoit*, 720 F. Supp. 119 (N.D. Ill. 1989) (racially-motivated fire bombings), *Sofarelli v. Pinellas County*, 931 F.2d 718 (11th Cir. 1991), (sending threatening notes) *United States v. City of Birmingham*, 727 F.2d 560 (6th Cir.) exclusionary zoning, cert. denied, 469 U.S. 821, 105 S. Ct. 95, 83 L. Ed. 2d 41 (1984).

30. Respondent refused and failed to make an accommodation to his no dog/pet policy and provide a reasonable accommodation and evicted Complainant Whitenburg based on her disability in violation of R.C. 4112.02(H)(1), (4),(19).

31. By placing an eviction notice on Complainant Whitenburg's door on the same date that Complainant FHCT gave Respondent a deadline to respond to their letter, Respondent engaged in an act of intimidation, threat, and coercion in violation of R.C. 4112.02(H) (12).

32. Complainant FHCT diverted resources to counteract the discriminatory conduct of Respondent through its attempt to resolve Complainant Whitenburg's Complainant. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 & n. 19, 102 S. Ct. 1124-25 & n. 19(1982).

33. Complainants Whitenburg and FHCT are entitled to relief as a matter of law.

DAMAGES

34. 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

35. 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.⁴ *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

⁴ 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).

36. When fair housing groups use resources to counteract discrimination and provide training, advertisement, and testing to address issues to insure housing and neighborhood choice to individuals, they can be awarded damages for diversion of resources and frustration of mission. Diversion of resources damages is the harm caused by the diversion of resources away from other programs to address the defendants' discriminatory practices. *Havens Realty, supra.*

37. In this case, the Commission presented evidence of Complainant Whitenburg's out of pocket expenses in the following amount:

Security deposit:	\$466.00
Dog fee:	\$ 20.00
Truck rental:	\$150.00
Gas:	\$ 60.00
Residential gas deposit:	\$150.00
Electricity deposit:	\$100.00
Duplex apartment deposit: (Tr. 36-36, Comm. Exh. 5)	\$400.00

38. Complainant Whitenburg was without her therapy animal for two months.

39. After Bear was sent away the seizures suffered by Complainant Whitenburg increased in number and severity. (Tr. 46)

40. Complainant Whitenburg did not bring her dog back to the apartment pending the outcome of her complaint because she was afraid of being evicted.

41. From 4/7/2010 to 7/20/2012 Complainant FHCT spent a total of 1,821 minutes or 30.35 hours for a total of \$4,553.00. (Comm. Exh. 5)

42. Complainant FHCT charges a monitoring rate of \$150 per hour for the investigation and the resolution of a case. The rate is based on what Complainant FHCT charges for training.

43. There was no evidence of the hourly rate each employee makes that participated in the investigation and resolution of the case.

44. Although the Complainant FHCT testified that it did training, education, and outreach, no documentary evidence (i.e. annual report, brochures, website, etc.) was introduced that shows specifically the type of training and outreach done by Complainant FHCT.

45. Based on the foregoing discussion, the ALJ recommends actual damage awards in the following amounts:

Complainant Whitenburg - \$3, 346.00 (\$1, 346.00 for out of pocket expenses and \$2,000.00 for emotional distress)

Complainant TFHC - \$1, 000.00 (diversion of resources)

PUNITIVE DAMAGES

46. The purpose of an award of punitive damages pursuant to R.C. 4112.05(G) is to deter future illegal conduct and 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).

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

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

48. Applying the foregoing criteria to this case:

- Although Respondent has been a licensed attorney for sixty (60) years, Respondent failed to inform himself of the laws that regulate owners of residential property that are seeking renters through advertisements in the open marketplace. Respondent has shown a reckless disregard for the law.
- The Commission did not present prior history of discrimination by Respondent;
- Respondent has been involved in the property rental business for about sixty (60) years.
- The Commission did not introduce evidence of Respondent's size and profitability.
- There was no evidence introduced during the hearing that Respondent was uncooperative with the Commission during its investigation.
- After Complainant Whitenburg had to get rid of Bear she suffered from increased stress and anxiety which caused her to have more frequent seizures. Complainant Whitenburg was in the apartment for approximately three months and was without Bear for two months.

49. Based on the foregoing discussion, the ALJ recommends that Respondent be assessed punitive damages in the amount of \$2,000.00 to be awarded to Complainant Whitenburg.

ATTORNEY'S FEES

50. 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.

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

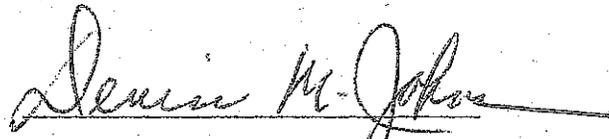
52. If the Commission adopts the ALJ's Report and the parties cannot agree on the amount of attorney's fees, the Commission should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted. Respondent may respond to the Commission's Application for Attorney's fees within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

53. 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. 11-HOU-TOL-34510 and 11-HOU-TOL-34477 that:

1. The Commission orders Respondent to cease and desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code;
2. The Commission orders Respondent to pay Complainant Whitenburg \$3,346.00 in actual damages; and
3. The Commission orders Respondent to pay Complainant FHCT \$1,000.00 for diversion of resources.
4. The Commission orders Respondent to pay Complainant Whitenburg \$2,000.00 in punitive damages.



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date: April 17, 2014