



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Fair Housing Contact Service & Luciane Araujo
Complainants,

v.

Lola May Tipton Trust & Gail Nida
Respondents.

Complaint No. 11-HOU-AKR-35273

OHIO CIVIL RIGHTS COMMISSION

G. Michael Payton
Executive Director

Commissioners

Leonard Hubert, Chairman
Lori Barreras
William W. Patmon, III
Tom Roberts

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

MIKE DeWine **ATTORNEY GENERAL**

Sharon D. Tassie
Principal Assistant Attorney General
Civil Rights Section of the Ohio Attorney General's Office
State Office Building, 11th Floor
615 West Superior Avenue
Cleveland, OH 44113
Counsel for Commission

Diane E. Citrino, Esq.
THACKER MARTINSEK LPA
2330 One Cleveland Center
1375 East 9th Street
Cleveland, OH 44114
Counsel for Complainant

Luciane Araujo
1257 Stratford Street
Barberton, OH 44203
Complainant

Fair Housing Contact Service
c/o Kris Keniray
441 Wolf Ledges Pkwy, Suite 200
Akron, OH 44311
Complainant's Representative

Central Office
30 East Broad Street
5th Floor
Columbus, Ohio 43215
(614) 466-2785 Phone
(888) 278-7101 Toll Free
(614) 644-8776 Fax
www.crc.ohio.gov

Lola May Tipton Trust
c/o Gail Nida, Trustee
2690 Pavonia N Road
Mansfield, OH 44903
Respondent

Gail Nida
2690 Pavonia N Road
Mansfield, OH 44903
Respondent

ALJ'S REPORT

Denise M. Johnson
Ohio Civil Rights - Hearing Division
State Office Tower, 5th Floor
30 East Broad Street
Columbus, OH 43215
614-466-6684
Chief Administrative Law Judge



Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners
Leonard J. Hubert, Chairman
William W. Patmon, III
Tom Roberts
Lori Barreras

G. Michael Payton, Executive Director

May 14, 2015

Sharon D. Tassie
Principal Assistant Attorney General
Civil Rights Section of the Ohio Attorney General's Office
State Office Building, 11th Floor
615 West Superior Avenue
Cleveland, OH 44113
Counsel for Commission

Diane E. Citrino, Esq.
THACKER MARTINSEK LPA
2330 One Cleveland Center
1375 East 9th Street
Cleveland, OH 44114
Counsel for Complainant

Lola May Tipton Trust
c/o Gail Nida, Trustee
2690 Pavonia N Road
Mansfield, OH 44903
Respondent

Luciane Araujo
1257 Stratford Street
Barberton, OH 44203
Complainant

Gail Nida
2690 Pavonia N Road
Mansfield, OH 44903
Respondent

Fair Housing Contact Service
c/o Kris Keniray
441 Wolf Ledges Pkwy, Suite 200
Akron, OH 44311
Complainant's Representative

Re: Fair Housing Contact Service & Luciane Araujo vs. Lola May Tipton Trust & Gail Nida
Complaint No.: 11-HOU-AKR-35273

Attached 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 **June 8, 2015**. *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.



Ohio Civil Rights Commission

Governor
John Kasich

Board of Commissioners

Leonard J. Hubert, Chairman
William W. Patmon, III
Tom Roberts
Lori Barreras

G. Michael Payton, Executive Director

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 / jmd

Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Lori A. Anthony, Section Chief – Civil Rights Section / Kari Stilwell, Administrative Secretary /
G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel /
Stephanie Bostos-Demers, Chief Legal Counsel



INTRODUCTION AND PROCEDURAL HISTORY

Fair Housing Contact Service (Complainant) and Luciane Araujo (Araujo) filed sworn charge affidavits with the Ohio Civil Rights Commission (Commission) on August 25, 2010. Araujo filed a second charge affidavit with the Commission on November 30, 2010.

The Commission investigated the charges and found probable cause that Gail Nida (Respondent Nida) and the Lola Mae Tipton Trust (Respondent LMTT) engaged in unlawful discriminatory practices in violation of Revised Code R.C. 4112.02(H)(4) and (12).

The Commission issued Complainant Nos. 35272, 35273, on November 22, 2011. The Commission issued Complaint No. 35486 on November 23, 2011. Respondent Nida filed an Answer on December 20, 2011. ¹

The Commission's Complainant alleges that Respondent has a policy requiring opposite sex children over the age of two to have separate bedrooms in violation of R.C. 4112.02(H)(4) and retaliated against Araujo for having opposed discriminatory practices in violation of R.C. 4112.02(H)(12).

A public hearing was held on October 18, 2012 at the Akron Government Building, 161 South High Street, Akron, Ohio. ²

¹ The Commission did not prosecute Complaint Nos. 35272 and 35486 on behalf of Araujo for failure to co-operate.

² Respondent Nida represented herself pro-se. Respondent Lola Mae Tipton Trust was not represented by counsel at the hearing. At the hearing the Commission moved to amend Complaint No. 35273 (FHCS) to include an allegation of retaliation. The ALJ granted the Commission's motion.

The record consists of the previously described pleadings a 191-page transcript, exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on December 7, 2012, and the Complainant on January 2, 2013.³

³ On December 18, 2012 Complainant filed a Notice of Intervention and Appearance, Motion to Amend the Complaint to Conform to the Evidence, and Post Hearing Brief. On January 2, 2012, Complainant filed a brief and filed motions to withdraw its previously filed motions. The Complainant's motion is granted.

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 each witness's strength of memory, frankness or 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 sworn charge affidavits with the Commission on August 25, 2010.

2. In a letter dated July 21, 2011 the Commission notified Respondents that it was probable Respondents engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H) (4).
3. The Commission attempted, but failed to resolve this matter by informal methods of conciliation.
4. Respondent Nida is the trustee for Respondent LMTT.
5. Respondent LMTT owns a six unit building at 311 Canton Road in Akron, Ohio.
6. Respondent Nida manages the property for Respondent LMTT.
(Tr. 67-68)

7. Complainant is a non-profit advocacy organization that strives to prevent and eliminate housing discrimination and promote equal housing opportunity. (Tr. 154)
8. Complainant's service area covers Summit, Medina, Portage, and Stark counties. (Tr. 29-30)
9. Complainant performs two types of testing: (1) when they are contacted by individuals who have concerns of housing discrimination, and (2) systemic testing or monitoring of the practices of various housing providers in their service area.
10. The Complainant requires extensive initial tester training for testers and the testers are regularly provided training thereafter to keep their testing skills current. (Tr. 156-157)
11. Araujo had been a tenant at the 311 Canton Road apartment building.

12. Araujo contacted Complainant because she believed that Respondent Nida was discriminating against her because she has a child. (Tr. 31)
13. Loren Green (Green), Complainant's Program Coordinator, determined that Araujo's complaint was an allegation of familial status discrimination.
14. Based on Araujo's complaint, Green determined that the Respondent LMTT's property be subjected to testing.
15. On June 24, 2010, Tonya Ballew (Ballew), called Respondent Nida to set up an appointment to view the property located at 2311 Canton Road. ⁴ (Comm. Exh. 2)
16. Ballew's profile was a married woman with no children.

⁴ HUD policies regarding housing discrimination only protect the identity of testers during the investigation of a charge. *Overlook Mut. Homes, Inc. v. Spencer*, 415 Fed. Appx. 617, 621 (6th Cir. 2011).

17. During Ballew's visit Respondent Nida asked how many people would be living in the unit.
18. Ballew informed Respondent Nida that it would be just her and her husband.
19. Respondent Nida replied that if they had children, and if the children were of the opposite sex, they would be required to sleep in separate bedrooms.
20. Respondent Nida also told Ballew that the law requires that at a certain age children could no longer share a room with their parents.
21. Respondent Nida would not let Ballew leave with an application.
22. Kimberly Ann Warner (Warner) was given the profile of a single mother with two children; one male, one female. (Comm. Exh. 3)

23. Warner contacted Respondent Nida by telephone on July 9, 2010.
24. During the telephone conversation Respondent Nida informed Warner that Ohio law stipulates that once children are older than the age of two, they must have separate bedrooms and that the living room does not count.
25. Respondent Nida explained to Warner that because of the law she would have to share a room with her daughter.
26. Warner made several attempts to visit the property and meet with Respondent Nida.
27. After the third attempt Warner met with Respondent Nida to look at the property.

28. After the tour of the apartment, Respondent Nida asked Warner if she was married to her children's father.
29. Warner answered no, that she had never been married.
30. Respondent Nida asked Warner if there was going to be domestic violence involved, and Warner answered no.
31. Nida informed Warner that if there was a domestic dispute and/or the police were called, Warner would receive a three (3) day notice of eviction. (Comm. Exh. 3)
32. Respondent Nida would not let Warner leave with an application.
(Tr. 143)
33. Tamika Brooks (Brooks) was given the profile of a single mother with a seven-year-old son. (Comm. Exh. 1, Tr. 34)

34. On June 24, 2010 Brooks called Respondent Nida and left a voicemail and Respondent Nida returned her call the same day.
35. Respondent Nida informed Brooks that she would have to fill out an application in person and would not be allowed to take an application with her.
36. Respondent Nida did not ask Brooks any questions that raised concerns about violations of state or federal housing discrimination law.
37. Tonya Tolson (Tolson) posed as a married female, no children, seeking a unit for herself, her husband and mother. (Comm. Exh. 2, Tr. 34-35)
38. On June 24, 2010 Tolson called and talked to Respondent Nida about the availability of an apartment.

39. Respondent Nida did not ask any questions that raised concerns about violations of state or federal housing discrimination law.
40. After the Complainant and Araujo filed charges with the Commission on August 25, 2010, Araujo decided to terminate her tenancy in September 2010.
41. Araujo filed a complaint in the Akron Municipal Court Small Claims Division to recover her unpaid deposit from Respondents. (Comm. Exh. 9)
42. Respondent Nida countersued.
43. Araujo filed a retaliation charge with the Commission on November 30, 2010.

44. The magistrate determined in a decision dated March 1, 2011 that the counterclaim “appeared to have no basis in law and was more along the lines of the Fair Housing dispute.” (Comm. Exh. 9)

45. The magistrate recommended that Araujo be paid \$229.60 of the \$550 security deposit paid to Respondent Nida.

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings, conclusions, and the arguments are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.

1. The amended Complaint alleges that:

(a) Respondents maintain policies and practices that have the purpose or effect of denying housing accommodations to persons because of their familial status in violation of R.C. 4112.02(H)(4);
and

(b) Respondents retaliated against a resident who engaged in a protected activity in violation of R.C. 4112.02(H)(12).

2. Respondents engaged in activity in violation of R.C. 4112.02(H)(4), and (7) which prohibits housing providers from making statements which place a limitation or preference upon an applicant seeking housing on the basis of sex.⁵

3. 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.

4. 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. See *e.g. Howard v. City of Beavercreek*, 108 F. Supp. 2d 866, 876 S.D. Ohio 2000) (applying FHAA analysis to state-law fair housing claims where language of the relevant provisions of the two statutes was similar).

⁵ The Complainant's motion to amend the complaint to conform to the evidence is granted.

5. The Commission and the Complainant have the burden of proof in cases brought under R.C. Chapter 4112. The Commission and the Complainant 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).

Familial Status

6. R.C. 4112.02(H)(4) makes it unlawful for any person to:

Discriminate against any person in the terms or conditions of . . . renting, leasing, or subleasing any housing accommodations or in furnishing facilities, services, or privileges in connection with the ownership, occupancy, or use of any housing accommodations . . . because of . . . familial status . . .

7. R.C. 4112.01(A)(15)(a) defines “familial status” as either:

One or more individuals who are under eighteen years of age and who are domiciled with a parent or guardian having legal custody of the individual or domiciled, with the written permission of the parent or guardian having legal custody, with a designee of the parent or guardian; or any person who is pregnant or in the process of securing legal custody of any individual who is under eighteen years of age.

8. The Commission may establish a violation of R.C. 4112.02 (H)(4) either through direct evidence of discrimination or through the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973) burden-shifting framework.

9. Under the *McDonnell Douglas* burden shifting framework the Commission is normally required to first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *McDonnell Douglas Co. v. Greene*, 411 U.S. 792, 5 FEP Cases 965 (1973).

10. In the instant case the Commission introduced direct evidence of Respondents facially discriminatory policy that once children are older than the age of two, they must have separate bedrooms and that the living room does not count. 6

Direct evidence is “evidence” which if believed, requires the conclusion that unlawful discrimination [i.e., the unlawful characteristic] was at least a motivating factor in the [Respondents’] actions. *White v. Columbus Metropolitan Housing Authority*, 429 F.3d 232, 238 (6th Cir. 2005).

"Direct evidence encompasses conduct or statements that both (1) reflect directly the alleged discriminatory attitude, and (2) bear directly on the contested [housing] decision." *Laing v. Fed. Express Corp.*, 703 F.3d 713, 717 (4th Cir. 2013) (quoting *Warch v. Ohio Cas. Ins. Co.*, 435 F.3d 510, 520 (4th Cir. 2006) (internal citations omitted).

6 Respondent Nida, Trustee for Respondent LLMT is personally liable for liabilities related to Trust property that arise during the time they have been in control of, and possessing legal title to that property. *In re Estate of Jess H. Wagler* (App.Ct. Ill. 3rd Dist., 1991), 217 Ill. App. 3d 526, 529-530.

11. Respondent Nida attempted to defend her actions of restricting the occupancy of bedrooms to children of the same sex by asserting that the restriction was valid based on a municipal code.
12. However, she was never able to produce or cite an applicable municipal code or any evidence that such a code ever existed.
13. Respondents have a policy that imposes restrictions upon families with children in violation of R.C. 4112.02 (4).

Retaliation

14. R.C. 4112.02(H)(12) makes it an unlawful discriminatory practice to:

Coerce, intimidate, threaten, or interfere with any person (...) on account of that person's having exercised or enjoyed or having aided or encouraged any other person in the exercise or (...) any right granted or protected by division (H) of this section.

15. 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).

16. The Commission can establish a *prima facie* case of R.C. 4112.02(H)(12) by establishing that:

- 1) Complainant engaged in activity protected by R.C. 4112.02 (H); and
- 2) Complainant suffered an adverse action in the form of coercion, intimidation, threats, or interference; and
- 3) There was a causal link between the protected activity and the adverse action.

Dubois v. Ass'n of Apt Owners, 453 F.3d 1175, 1180.

17. The temporal relationship between a plaintiff's participation in protected activities and a defendant's alleged retaliatory conduct is an important factor in establishing a causal connection. *Gonzales v. State of Ohio, Dept. of Taxation*, 78 FEP Cases 1561. (S.D. Ohio 1998).

18. Arajuo, engaged in a protected activity when she contacted Complainant and Complainant assisted Arajuo in filing a charge of discrimination with the Commission on August 25, 2010.
19. Respondent Nida was aware that Arajuo filed a charge with the Commission before Araujo moved out of the apartment. (Tr. 92)
20. Araujo filed a lawsuit against Respondent Nida for the return of her unpaid security deposit shortly after she moved out in September 2010.
21. In response to Araujos lawsuit for return of her unpaid security deposit, Respondent Nida countersued Araujo for money for damages to the apartment that exceeded the amount of the unpaid security deposit.
22. The Commission established a *prima facie* case of retaliation.

23. The Commission having established a *prima facie* case, the burden of production shifted to Respondents to “articulate some legitimate, nondiscriminatory reason” for the adverse action. *McDonnell Douglas, supra* at 802, 5 FEP Cases at 969. To meet this burden of production, Respondents must:

. . . “clearly set forth, through the introduction of admissible evidence,” reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of the [adverse] action.

St. Mary’s Honor Center v. Hicks, 509 U.S. 502, 507, 62 FEP Cases 96 (1993), quoting *Burdine, supra* at 254-55, 25 FEP Cases at 113, n.8.

24. Respondents met its burden of production with evidence that she countersued because Araujo caused significant damage to the apartment during her tenancy.

25. The Respondents having met its burden of production, the Commission must prove that Respondent engaged in unlawful retaliation against Complainant because she engaged in a protected activity. *Hicks, supra* at 511, 62 FEP Cases at 96.

26. The presumption of unlawful retaliation created by the establishment of a *prima facie* case “drops out of the picture” when the housing provider articulates a legitimate, nondiscriminatory reason for the adverse action. *Hicks, supra* at 511, 62 FEP Cases at 96.

27. The Commission must show by a preponderance of the evidence that Respondents’ articulated reason for taking the adverse action against Complainant is not the true reason, but was a “pretext for . . . [unlawful retaliation].” *Id.*, at 515, 62 FEP Cases at 102, quoting *Burdine*, 450 U.S. at 253, 25 FEP Cases at 115.

28. Thus, even if the Commission proves that Respondents' articulated reason is false or incomplete, the Commission does not automatically succeed in meeting its burden of persuasion:

That the [housing provider's] proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the . . . [Commission's] proffered reason of . . . [unlawful retaliation] is correct. That remains for the factfinder to answer . . .

Id., at 524, 62 FEP Cases at 96.

29. The magistrate found that the condition of the apartment complained of by Respondent Nida existed before Araujo moved in.

30. Respondent Nida was supposed to make the necessary repairs that she attributed to Araujo at the time that Araujo moved in the apartment.

31. The magistrate determined that Respondent Nida's countersuit had no merit and that her countersuit was based on complaints related to Araujo having filed a charge of discrimination against Respondent Nida.

32. Based on the credible evidence introduced by the Commission, I found Respondent's reasons lacked credibility.

33. Respondent engaged in illegal retaliation in violation of R.C. 4112.02(H)(12).

Statement Indicating a Preference or Limitation based on Sex

34. R.C.4112.02 (H) (4) & (7) makes it an unlawful discriminatory housing practice related to the rental or lease of any housing accommodation to:

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

(7) (...) make or cause to be made any statement (...) relating to the rental, lease (...) of any housing accommodations (...) that indicates a preference, limitation, (...) based upon (...), sex, (...) or an intention to make any such preference, limitation, specification (...)

35. The Complainant alleges that Respondent Nida's statements asking Warner whether there would be any domestic violence and if there was Warner would be evicted, expresses a limitation or preference based on sex, female.

36. Housing providers discriminate when they make an “ad [statement] that suggest to an ordinary reader [listener] that a particular group is preferred, limited, specified or discriminated against.” *Miami Valley Fair Housing Ctr., Inv. V. Connor Group*, 725 F.3d 571, 578 (6th Cir. 2013).

The ordinary reader standard applies to both advertisements and oral statements alike. *Heights Cmty. Congress v. Hilltop Realty, Inc.*, 629 F. Supp. 1232, 1295 (N.D. Ohio 1983), aff’d in part and rev’d in part on other grounds 774 F.2d 135 (6th Cir. 1985).

37. The standard for determining whether a statement indicates a preference is whether it would discourage an ordinary listener of the protected class at issue from renting based on their status as a member of a protected class. *Ragin v. New York Times Co.*, 923 F.2d 995, 999-1000 (2nd Cir. 1995)

38. The ordinary listener standard is an objective standard where the ordinary listener is not the “most suspicious or the most insensitive in our citizenry.” *Connor Grp. supra* at 577 (quoting *Jancik v. Dep’t of Hous. & Urban Dev.*, 44 F. 3d 553, 556 n. 4).
39. The Complainant needs only to show discriminatory effect, and need not show that the decision complained of was made with discriminatory intent. *Soules v. United States Dep’t of Hous. & Urban Dev.*, 967 F.2d 817, 822 (2d Cir. 1992).
40. Although the Complainant is not required to show intent, Respondent Nida’s intent may be relevant. *Connor Group, supra* at 577.
41. The statement that Respondent Nida made to Warner was not based on an individualized assessment, but an assumption.

42. Respondent Nida's intent is inferred from the circumstances giving rise to her statement: Warner's profile as a single mother, never having been married to or having a relationship with her children's father.

43. Females are victims of domestic violence at a higher rate than men.

"Statistics show that women are overwhelmingly the victims of domestic violence. (footnote omitted) An estimated 1.3 million women are the victims of assault by an intimate partner each year, and about 1 and 4 women will experience intimate partner violence in their lifetimes. (footnote omitted) The U.S. Bureaus of Justice Statistics found that 85% of victims of domestic violence are women. (footnote omitted) In 2009, women were about five times as likely as men to experience domestic violence. (footnote omitted) These statistics show that discrimination against victims of domestic violence is almost always discrimination against women." February 9, 2011 HUD Memorandum entitled *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHAct) and the Violence Against Women Act (VAWA)*. (Comp. Exh. A).

44. Cases arising under the FHA have borrowed from Title VII case law in construing and analyzing housing discrimination claims.

Because Title VII and the FHA employ similar language and "are part of a coordinated scheme of federal civil rights laws enacted to end discrimination," much of our FHA jurisprudence is drawn from cases interpreting Title VII. *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926, 935 (2d Cir. 1988).

Congress has evidenced that it wants to afford plaintiffs under the FHA at least the same protections as employees under Title VII, if not more protections considering that plaintiffs under the FHA need not prove the housing provider intended to discriminate. *Conner, supra*.

45. Respondent Nida's statement reflects a stereotype that women are victims of domestic violence and that Warner would conform to that stereotype.

46. Sex stereotyping is a prohibited form of conduct under Title VII and is therefore applicable to cases arising under the FHA.

"As for the legal relevance of sex stereotyping, we are beyond the day when a [housing provider] could evaluate [applicants for housing] by assuming or insisting that they matched the stereotype associated with their group..." (citations omitted) *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251.

47. The statement suggests to the ordinary listener that the Respondent Nida's statement would discourage a female from renting because the statement indicates a preference not to rent to females whom Respondent Nida stereotypes as having the potential to become victims of domestic violence.

48. Respondent Nida's statement indicates an impermissible preference, limitation, or discrimination against females in violation of R.C. 4112.02(H)(4) & (8).

49. Respondents conduct violates R.C. 4112.02(H) 4, 7, 8, & 12.

50. The Complainant is therefore entitled to relief as a matter of law.

DAMAGES

51. 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

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

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. *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).

53. 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 actual 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 Corp. v. Coleman*, 455 U.S. 363, 379 & n. 19, 102 S.Ct. 1124, 1125 & n. 19 (1982).

Frustration of mission is injury to "non-economic interest in encouraging open housing." *Id* at 368. To recover [damages for frustration of mission] a fair housing organization must establish that expenditures in education, counseling or outreach are necessary to counteract the effects of discrimination. *Spann v. Colonial Village, Inc.*, 899 F. 2d 24, 28-29, cert. denied, 498 U.S. 980 (1990).

54. From 6/24/2010 to 7/20/2012 Complainant diverted the organization's resources from its program and services in investigating the conduct of Respondent Nida. The total expended by Complainant was \$7,440.07. (Comm. Exh. 8, pp. 1-8).

55. Complainant also expended additional resources totaling \$2,448.14 to encourage open housing through the following expenditures:

- Fair Housing Training: \$750.00
- Brochure on Family Status: 6 hours of staff time developing brochure content and creating brochure - \$210.00
- Brochure on Family Status: 8.5 hours of staff time at an average hourly rate of \$35/hr consisting of 4.5 hours identifying and arranging 15 flyer distribution sites and 4 hours distributing flyers - \$297.00
- Brochure-Material and Production: Paper and printing costs - \$12.00
- Brochure-Mileage Reimbursement: Mileage costs for use of privately owned vehicle to distribute flyers - \$22.00
- Training Announcement Development: 2 hours of staff time at an average hourly rate of \$35/hr to develop the training announcement - \$70.00
- Disseminate Training Announcement: Disseminate training announcement to 40 locations for circulation - \$35.00
- Fair Housing Training-Materials: Card stock and printing costs - \$12.00
- Fair Housing Training for Tenants: 11 hours of staff time at an average hourly rate of \$35/hr consisting of 2 hours coordinating room reservations, 3 hours of preparation for training, 2 hours conducting the training, 4 hours for travel, setup and breakdown, 2 staff presenters.
- Indirect Cost Rate of 36% - \$648.04
(Comm. Exh. 8, pp. 8-9).

56. Based on the foregoing discussion, the ALJ recommends an award of actual damages to Complainant for diversion of resources and frustration of mission in the amount of \$9,888.21.

PUNITIVE DAMAGES

57. 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).

58. 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.

59. Applying the foregoing criteria to this case:

- Respondent Nida used as a defense to familial status discrimination a law that she could not identify and which does not exist.
- The Commission did not present prior history of discrimination by Respondents.
- Respondent LMTT owns a six unit building in Akron, Ohio; Respondent has been involved in the property rental business for about sixty (60) years.
- The Commission did not introduce evidence of Respondents' profitability.
- There was no evidence introduced during the hearing that Respondent Nida was uncooperative with the Commission during its investigation.
- Complainant diverted resources to investigate Respondent Nida's discriminatory conduct and expended resources to provide training and information in the Akron region regarding familial status discrimination.

60. Based on the foregoing discussion, the ALJ recommends that Respondents be assessed punitive damages in the amount of \$111.79 to be awarded to Complainant.

ATTORNEY'S FEES

61. The Commission and Complainant are 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.

62. In order to create a record regarding Attorney's Fees, the counsel for the Commission and the Complainant 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 Respondent. Respondent may respond with counter-affidavits and other arguments regarding the amount of Attorney's Fees in this case.

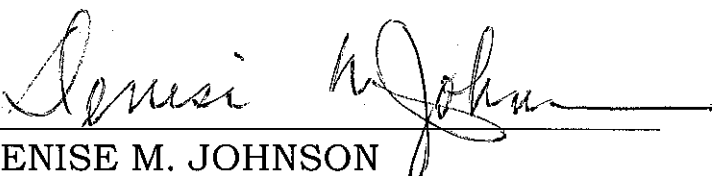
63. If the Commission adopts the ALJ's Report and the parties cannot agree on the amount of Attorney's Fees, the Commission and Complainant should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted. Respondent may respond to the Commission's and Complainant's Application for Attorney's Fees within 30 days from his receipt of the Commission's and Complainant's Application for Attorney's Fees.
64. 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-AKR-35273 that:

1. The Commission orders Respondents to Cease and Desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code;
2. The Commission orders Respondents to pay Complainant actual damages in the amount of \$9,888.21 for Diversion of Resources and Frustration of Mission;
3. The Commission orders Respondents to pay Complainant \$111.79 in punitive damages;

4. The Commission orders Respondent Nida, within six (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 Respondent Nida's participation in fair housing training, Respondent Nida shall submit certification from the trainer or provider of services that Respondent Nida has successfully completed the training;
5. The Commission orders Respondent Nida within seven (7) months of the Commission's Final Order, to submit Respondents' Letter of Certification of Training to the Commission's Compliance Department; and
6. The Commission orders Respondents to use equal housing opportunity notices in Respondents' rental applications.


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date: May 14, 2015