



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Randi & Kirk C. Ray
Complainants,

Complaint No. 14-HOU-COL-40697

v.

Randy Michael Brinker, et al.
Respondents.

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

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

Commissioners

Leonard Hubert, Chairman
Lori Barreras
Juan Cespedes
William W. Patmon, III
Madhu Singh

MIKE DeWINE
ATTORNEY GENERAL

Wayne D. Williams, Esq.
Principal Assistant Attorney General
Civil Rights Section
615 West Superior Avenue, 11th Floor
Cleveland, Ohio 44113
Counsel for Commission

James L. Nicholson, Esq.
305 South Fourth Street
P.O. Box 97
Martins Ferry, Ohio 43935
Counsel for Respondents

Lori A. Anthony, Esq.
Section Chief
Civil Rights Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215
Counsel for Commission

Randi & Kirk Ray
4485 Noble Street
Bellaire, Ohio 43906
Complainants

ALJ'S REPORT
Denise M. Johnson
Ohio Civil Rights Commission
Hearings Division
30 East Broad Street, 5th Floor
Columbus, OH 43215
(614) 466-6684
Chief Administrative Law Judge

CENTRAL OFFICE
30 East Broad Street
5th Floor
Columbus, Ohio 43215
(614) 466-2785 Phone
(888) 278-7101 Toll Free
(614) 466-7742 Fax
www.crc.ohio.gov



Ohio Civil Rights Commission

Governor
John R. Kasich

Board of Commissioners

Leonard J. Hubert, Chair
Lori Barreras
Juan Cespedes
William Patmon, III
Madhu Singh

G. Michael Payton, Executive Director

June 8, 2016

Wayne Williams, Esq.
Principal Assistant Attorney General
Civil Rights Section
615 West Superior Avenue, 11th Floor
Cleveland, Ohio 44113
Counsel for Commission

Lori Anthony, Esq.
Section Chief
Civil Rights Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215
Counsel for Commission

James L. Nichelson, Esq.
305 South Fourth Street
P.O. Box 97
Martins Ferry, Ohio 43935
Counsel for Respondents

Randi & Kirk Ray
4485 Noble Street
Bellaire, Ohio 43906
Complainants

Re: *Randi & Kirk C. Ray v. Randy Michael Brinker, et al.*
Complaint No. 14-HOU-COL-40697

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 Administrative Code §4112-1-02, your Statement of Objections must be **received** by the Commission no later than July 1, 2016. *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 /EKS
Desmon Martin
Director of Enforcement and Compliance

Attachments

cc: Kari Jackson, Administrative Secretary / G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel / Stephanie Bostos-Demers, Chief Legal Counsel

CENTRAL OFFICE • State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414
• Central Office: 614-466-2785 • TOLL FREE: 1-888-278-7101 • TTY: 614-466-9353 • FAX: 614-644-8776

REGIONAL OFFICES
AKRON • CINCINNATI • CLEVELAND • COLUMBUS • DAYTON • TOLEDO
www.crc.ohio.gov



INTRODUCTION AND PROCEDURAL HISTORY

Randi and Kirk C. Ray (Complainant Randi Ray and Complainant Kirk Ray) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on December 13, 2013.

The Commission investigated and found probable cause that unlawful discriminatory practices had been engaged in by Randy Brinker (Respondent Brinker) and Brink Rentals, LLC (Respondent) in violation of R.C. 4112.02(H).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission issued the Complaint, Notice of Hearing, and Right of Election on November 20, 2014.

The Complaint alleged that Respondents discriminated against Complainants in the terms and conditions of leasing due to their race in violation of R.C. 4112.02(H)(4) and coerced, intimidated, threatened, and interfered with Complainants' enjoyment of their rights under R.C. 4112.02(H), in violation of R.C. 4112.02(H)(12) because of their race.

Respondents filed their Answer on December 3, 2014, denying all of the allegations of the Complaint.

A public hearing was held on August 19, 2015 at the Bellaire Public Library, 330 32nd Street, Bellaire, Ohio 43906.

The record consists of the previously described pleadings; a transcript consisting of 221 pages of testimony; exhibits admitted into evidence at the hearing; and the post-hearing briefs filed by the Commission on October 13, 2015; by Respondent on November 9, 2015; and the Commission's reply brief filed November 16, 2015.

FINDINGS OF FACT

The following findings of fact are based, in part, upon the ALJ's 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 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 a charge with the Commission on December 13, 2013.
2. The Commission determined on July 18, 2014, that it was probable that Respondents engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H)(4) and (12).
3. On November 5, 2014, James L. Nichelson (Nichelson), attorney for Respondents, received a communication stating that the Commission had found probable cause on Charge

No. (COL) H1 (40697) 12122013; 05-14-0363-8; 22A-2014-0238F and inviting Respondents to participate in conciliation. (Admission No. 12)

4. A copy of a proposed Conciliation Agreement was attached to the communication dated November 5, 2014. (Admission No. 13)
5. On November 12 and 13, 2014, Nichelson corresponded with Ronnell Tomlinson (Tomlinson) regarding an offer of resolution for conciliating Charge No. (COL) H1 (40697) 12122013; 05-14-0363-8; 22A-2014-0238F. (Admission No. 16)
6. On November 12, 2014, Nichelson rejected the proposal of settlement made by Complainants. (Admission No. 17)
7. On November 13, 2014, Tomlinson informed Nichelson that conciliation was at an impasse.¹ (Admission No. 18)

¹ On March 9, 2015, the Commission served Requests for Admission on Respondents. Respondents failed to answer or respond within the time period set forth by Civ. R. 36 pursuant to O.A.C. 4112-3-12. On April 17, 2015, the Commission filed a Motion to Deem Requests for Admissions Admitted. Respondents responded to the Request for Admissions on April 22, 2015. Respondents did not request an extension or offer a justification for the failure to respond to or answer the Commission's Request for Admissions within the time period set forth under the Civ. R. 36. The Commission filed a motion to strike the responses on May 6, 2015. The ALJ held a status conference on June 3, 2015. The Commission argued that to deny the Commission's motion would impose an unjust hardship on the Commission and Complainants. The ALJ denied the Commission's motion to strike admissions which admitted liability and granted the portion of the motion regarding the Commission's attempt to conciliate.

8. On November 14, 2014, Tomlinson sent a letter to Respondents by regular mail which stated that conciliation efforts have failed. (Admission No. 20)
9. The Commission issued the complaint after conciliation failed.
10. Respondents own several properties in Bellaire, Ohio. (Tr. 201-205, Comm. Exh. 9)
11. Complainants are African-American. (Tr. 10, 103-104)
12. Complainant Randi Ray's sister, Juanita Judie (Judie), is the girlfriend of Respondent Brinker. (Tr. 110, 206)
13. Judie is African-American. (Tr. 111)
14. Judie and Respondent Brinker have been living together, on and off, for seven or eight years. (Tr. 110)
15. Judie collects rents for Respondents; does some cleaning and maintenance of the properties; finds, interviews, and takes applications from prospective tenants; and identifies properties for purchase. (Tr. 112-113, 126)
16. Complainant Kirk Ray had a stroke in 2010. (Tr. 25, 104)
17. Complainants lost their house in 2010. (Tr. 87)

18. Judie convinced Respondent Brinker to rent one of his houses to Complainants for a low price. (Tr. 125, 179)
19. Complainants began renting from Respondents in 2011. (Tr. 17-18, 178-179)
20. Complainants had a verbal month-to-month lease agreement with Respondents. (Tr. 12-13)
21. Before the fall of 2013, Complainants interacted socially with Respondent Brinker and Judie. (Tr. 89, 178)
22. Towards the end of July 2013, Respondent started banging on Complainants' door at all hours during the day and night shouting racial epithets and curses. (Tr. 22-24)
23. In August 2013, Complainant Randi Ray purchased a new van. (Tr. 35)
24. Respondent Brinker demanded that Complainants tell him the purchase price of the van, cursed at Complainant Randi Ray and threatened to raise their rent. (Tr. 35-36)
25. The day after Respondent Brinker saw Complainants' new van, both the van and Complainants' other vehicle were damaged. (Tr. 36)

26. Both vehicles were scratched and the van's front driver's side tire was sliced. (Tr. 36-37)
27. Complainants had to pay a \$500 deductible to get the van fixed. (Tr. 38)
28. In September 2013, Respondent Brinker asked Complainants to remove their possessions from the garage behind the house by October 1, 2013. (Tr. 16-17, 33)
29. While Complainant Kirk Ray was alone and moving items out of the garage, Respondent Brinker cursed at Complainant Kirk Ray. (Tr. 25, 183)
30. Respondent Brinker called Complainant Kirk Ray names and racial epithets, and threatened to hurt him if he told anyone. (Tr. 25, 106-108)
31. On September 30, 2013, Complainants were removing more of their things from the garage when Respondent Brinker arrived and started yelling, cursing, and using racial slurs towards Complainants. (Comm. Exh. 2)
32. Curtissa, Complainants' twelve-year-old daughter, witnessed Respondent Brinker's behavior and started to cry. (Comm. Exh. 2)

33. After September 30, 2013, Complainants observed that Respondent Brinker had placed a couch, two chairs, a small refrigerator and tables in the garage. (Tr. 34)
34. Respondent Brinker shouted racial slurs at Brittany, Complainants' older daughter, from the garage whenever she would come to visit her parents. (Tr. 33)
35. One night in the fall of 2013, Complainant Randi Ray and Curtissa were sitting outside on their back porch talking about Curtissa's sports. (Tr. 38)
36. Respondent Brinker asked them what they were doing there, cursed, and called them names and racial slurs. (Tr. 38)
37. Throughout the fall of 2013, Complainants went to the boat dock in Bellaire to get away from Respondent Brinker at least 20 times. (Tr. 39-40)
38. In October 2013, Respondent Brinker and Judie separated for approximately four months. (Tr. 132, 206)
39. In the autumn of 2013, Complainant Kirk Ray, Curtissa, his nephew, and Judie went to a local football game.² (Tr. 44)
40. Respondent Brinker was also at the game. (Tr. 195)

² The football game was between Bellaire and St. Clairsville at Nelson Field. (Tr. 44, <http://www.joeitel.com/hsfoot/teams.jsp?teamID=182&year=2013>)

41. Complainant Randi Ray came at the end of the game to pick up her family. (Tr. 44, 46)
42. Respondent Brinker was on the outside of the fence and observed Curtissa walking on the inside of the fence. (Tr. 44, 46)
43. Respondent Brinker spoke to Curtissa, telling her that she wouldn't have a good Christmas that year and Curtissa cried. (Tr. 44, 121, 196)
44. Respondent Brinker also approached Complainant Randi Ray while she was inside her van to inquire about its occupants while referring to Complainant Randi Ray as a "bitch." (Tr. 44)
45. Complainant Randi Ray found the police and complained about Respondent Brinker's actions toward herself and her daughter. (Tr. 44)
46. The police later arrested Respondent Brinker inside a Kroger. (Tr. 44-45)
47. One night in the fall of 2013, Respondent Brinker broke the lights off the front and back porches on the property that Complainants rented. (Tr. 55, 197)

48. A neighbor of Complainants' witnessed him using a stick to break the lights and told Complainant Randi Ray, who called the police. (Tr. 55)
49. Respondent Brinker was arrested that night and charged with ethnic intimidation and fleeing and eluding the police. (Tr. 208-209)
50. During the time that Respondent Brinker started calling Complainants racial slurs, threatening them and destroying their personal property, Judie collected the rent. (Tr. 84)
51. On December 4, 2013, Respondent Brinker attempted to collect rent money from Complainant Kirk Ray. (Tr. 61-62)
52. Complainant Kirk Ray did not have the money because his wife had it with her at work. (Tr. 61-62)
53. Respondent Brinker started yelling at Complainant Kirk Ray and calling him racial slurs. (Tr. 62)
54. Complainants' daughter Brittany arrived and went to her father's aid. (Tr. 62)
55. Respondent Brinker got into his car and drove in the direction of Brittany.³ (Tr. 62)

³ Respondent Brinker was later convicted of trying to run over Brittany. (Tr. 209)

56. On December 5, 2013, Respondent Brinker returned to Complainants' residence to get the rent payment. (Tr. 64, Comm. Exh. 8)
57. He had one man and two women with him. (Tr. 64)
58. Respondent Brinker yelled at Complainants, cursing and using racial slurs. (Tr. 64-65)
59. Complainants called the police. (Tr. 67)
60. Officer Aynsley Hildebrand (Officer Hildebrand), employed by the Bellaire Police Department, arrived on the scene and took an incident report. (Comm. Exh. 8)
61. Officer Hildebrand attempted to pull over Respondent Brinker in his vehicle to get his statement. (Tr. 167-168)
62. Respondent Brinker drove through a stop sign and up a driveway to a residence before stopping. (Tr. 168, 174)
63. Respondent Brinker refused to listen to Officer Hildebrand and was tased and arrested. (Tr. 169)
64. Respondent Brinker was placed in jail in December 2013 and was not released until January 2014. (Tr. 210-212)

65. While Respondent Brinker was in jail, his brother executed a written month-to-month lease with Complainants dated January 10, 2014. (Tr. 15, Comm. Exh. 1)
66. Complainants chose not to move because the rent was affordable and they wanted to continue to help support their son in college. (Tr. 74)
67. Rents in the area are sky high due to the gas and oil workers moving into the area. (Tr. 74)

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 subjected Complainants to adverse terms and conditions in the leasing of a house because of their race, and coerced, intimidated, threatened and interfered with Complainants' enjoyment of their home.
2. These allegations, if proven, would constitute violations of R.C. 4112.02(H)(4) and (12) which provides in pertinent part that it is an unlawful discriminatory housing practice for any person to:

(4) Discriminate against any person in the terms or conditions of renting because of race;

(12) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or

enjoyed any right granted or protected by division (H) of R.C. 4112.02.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove violations 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.*, 61 Ohio St.3d 607, 609-610 (1991).
5. 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).
6. The Commission is normally required to first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *McDonnell Douglas v. Greene*, 411 U.S. 792 (1973).

7. The establishment of a *prima facie* case creates a rebuttable presumption of unlawful discrimination. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981).
8. The Commission may establish a *prima facie* case of housing discrimination by either direct or circumstantial evidence. *Younis v. Pinnacle Airlines, Inc.* 610 F.3d 359, 363 (6th Cir. 2010).

Direct evidence of discrimination is “that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the [housing provider’s] actions.” Circumstantial evidence, on the other hand, is proof that does not on its face establish discriminatory animus, but does allow a factfinder to draw a reasonable inference that discrimination occurred.

Wexler v. White’s Fine Furniture, Inc., 317 F.3d 564, 570 (6th Cir. 2003), quoting *Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 926 (6th Cir. 1999).

9. In this case the Commission presented direct evidence of intentional discrimination.
10. Respondent Brinker attempted to question the credibility of Complainants’ testimony because he has a romantic relationship with Complainant Randi Ray’s sister, Judie, and at one time had a friendly relationship with Complainants. (Tr. 180-182)

11. However a reasonable inference can be drawn from the credible evidence in the record that Respondent Brinker began racially harassing Complainants in a covert, stealthy manner out of Judie's plain sight.
12. Respondent Brinker began racially harassing Complainants in July of 2013.
13. At some point in the fall of 2013, Judie was not living with Respondent Brinker.⁴ (Tr. 117)
14. This was the same period of time that Respondent Brinker was harassing Complainants by destroying their personal property, calling them racial slurs, and directing threatening gestures and behavior toward Complainants. (Tr. 120-121)
15. Complainants testified that after they were evicted from their garage on October 1, 2013, the number of occasions that they observed Respondent Brinker in the garage made them feel that he was living in the garage. (Tr. 34)
16. During the time that Judie and Respondent Brinker stopped living together, Respondent Brinker called Judie "nigger" and "nigger bitch" while Judie was living with her daughter. (Tr. 117)

⁴ At the time of the hearing, Judie was living with Respondent Brinker. (Tr. 110)

17. Respondent Brinker also called Judie's daughter a "nigger."
(Tr. 117)

18. Respondent Brinker referred to Complainant Randi Ray as a
"nigger" and "your nigger sister" in front of Judie. (Tr. 118)

19. Judie was aware that Respondent Brinker was harassing,
insulting, and intimidating Complainants:

[Nichelson] Q: Family is pretty important to
you?

[Judie] A: Yes (inaudible).

Q: Including your sister, Pearl?

A: Of course. That's my baby sister.

Q: Right. And would you allow Randy Brinker to
harass or insult or intimidate your sister and her
family?

A: I would wish that he wouldn't. But I mean, I've
asked him to (inaudible). To the best of my
knowledge, I try to stop it.

(Tr. 125-126)

20. Around the fall of 2013, Respondent Brinker came to
Complainants' home every day cursing and using racial
epithets. (Tr. 27)

21. Respondent Brinker threw garbage on Complainants' porch, pulled plants out of the yard, and destroyed the solar lights, overturned planters, and destroyed the garden while yelling racial epithets. (Tr. 22-24, 29-30, Comm. Exh. 4, 5, 6)
22. Respondent Brinker left an Avon bottle shaped like a bullet on Complainants' front porch and said to Complainant Randi Ray that "this was just a warning and the next one would be for you motherfuckers." (Tr. 66, Comm. Exh. 7)
23. Respondent Brinker told Complainant Randi Ray that he was going to "fucking terrorize you niggers until you move out of my rental property." (Tr. 31)
24. I found Complainants' testimony to be credible.
25. In 2013, Bellaire Police Department's Patrolman Charleton Russell Cunningham (Patrolman Cunningham) responded to three to four calls regarding Respondent Brinker's conduct. (Tr. 145)
26. Patrolman Cunningham heard Respondent Brinker call Complainants and Judie "fucking niggers." (Tr. 147)
27. In 2013, Lieutenant Dick Flanagan (Lieutenant Flanagan) of the Bellaire Police Department responded to a call from Complainants regarding Respondent Brinker's conduct at Complainants' residence. (Tr. 156)

28. During the time that Lieutenant Flanagan was at Complainants' residence, he heard Respondent Brinker refer to Complainants using the racial epithet "fucking nigger." (Tr. 157)
29. It is incredible that Respondents would question the credibility of Complainants and totally ignore the testimony of the Bellaire police who witnessed Respondent Brinker's behavior and persistent use of the racial epithet "fucking niggers" in addressing Complainants while they were attempting to enjoy the comforts of their home.
30. Respondent Brinker engaged in conduct that amounted to a reign of terror to intimidate and threaten Complainants because of their race.
31. Respondent Brinker engaged in conduct that interfered with and deprived Complainants of the enjoyment of their property because of their race.
32. Respondent Brinker engaged in illegal housing discrimination in violation of R.C. 4112.02(H)(4) and (12).
33. Therefore Complainants are entitled to relief as a matter of law.

DAMAGES

1. When there is a violation of R.C. 4112.02(H), the statute requires an award of actual damages shown to have resulted from the discriminatory action, as well as reasonable attorney's fees. R.C. 4112.05(G)(1).
2. The statute also provides that the Commission, in its discretion, may award punitive damages.

ACTUAL DAMAGES

3. The purpose of an award of actual damages in a fair housing case, as in employment discrimination cases, "is to put the [Complainant] in the same position, so far as money can do it, as . . . [the Complainant] would have been, had there been no injury or breach of duty" *Lee v. Southern Home Sites Corp.*, 429 F.2d 290, 293 (5th Cir. 1970) (citations omitted).
4. 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, 384 (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).
5. Damages for intangible injuries may be established by testimony or inferred from the circumstances.⁵ *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

⁵ 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).

6. In this case, the Commission presented evidence that Respondents' discriminatory actions caused Complainants economic loss.
7. Respondent Brinker damaged Complainants' automobiles for which they had to spend \$500.00 out of pocket for the deductible required by their insurance.
8. Respondent Brinker also damaged Complainants' personal property: flower pots, solar lights, and plants in the garden.
9. The ALJ recommends that Complainants be awarded \$600.00 to compensate them for their out-of-pocket expenses.
10. However, it was Respondents' reign of terror and harassment towards Complainants that caused Complainants to suffer emotional distress.
11. Complainant Randi Ray testified that she was terrified of Respondent Brinker because he was coming to the house all hours of the night and day and would start screaming and hollering and beating on the door. (Tr. 22, 42)
12. Complainant Randi Ray feared for Complainant Kirk Ray, who had suffered a stroke, and feared for the safety of herself and her younger daughter. (Tr. 75-77, 106-108)

13. Not only was Complainant Randi Ray harangued and harassed in her home, she was also stalked and harassed in public spaces because of Respondent Brinker's racially discriminatory conduct. (Tr. 27-28)

14. Complainants' twelve-year-old daughter Curtissa missed school a few days to stay at home with her father, Complainant Kirk Ray, because she wanted to somehow protect her father from Respondent Brinker's racist tirades:

[Williams] Q: What you described with Curtissa just a moment ago, do you know if that had any effect on her in school?

[Randi Ray] A. Well, she did stay home a few days to stay with her dad.

Q. Okay. Why did she have to stay with her dad?

A. Because she was afraid that Randy was going to hurt her dad because when he—what Randy Brinker would do was, he knew I worked in the morning. So when he knew my daughter, Curtissa, would be in school, I was at work, that's when he would come and mess with my husband, Kirk, all the time. My husband had called me numerous times at work crying because of the stroke did something to his brain what when he gets upset like that, he has like crying things. And he was really scared of him—of Randy Brinker. So he would call me up crying. So there's been sometimes that my daughter has stayed home from school.

(Tr. 77)

15. Respondents' reign of racial harassment and terror directed toward Complainants caused them to suffer an extreme amount of emotional distress.
16. Respondents' racially discriminatory conduct was both egregious and persistent, occurring from July 2013 to December of 2013.
17. The ALJ recommended that Complainants each be awarded \$25,000 for a total amount of \$50,000.00 for the emotional distress and humiliation that Complainants suffered as a result of Respondents' racially discriminatory conduct.

PUNITIVE DAMAGES

18. The purpose of an award of punitive damages pursuant to R.C. 4112.05(G) is to deter future illegal conduct. O.A.C. 4112-6-02.

19. Thus, punitive damages are appropriate "as a deterrent measure" even when there is no proof of actual malice. *Schoenfelt v. Ohio Civil Right Comm.*, 105 Ohio App.3d 379, 385 (1995), *citing and quoting Marr v. Rife*, 503 F.2d 735, 744 (6th Cir. 1974).

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

- The nature of Respondents' conduct;
- Respondents' prior history of discrimination;
- Respondents' size and profitability;
- Respondents' cooperation or lack of cooperation during the investigation of the charge; and
- The effect Respondents' actions had upon Complainants.⁶ O.A.C. 4112-6-02.

⁶ This criterion is more appropriately considered when determining actual damages.

21. Applying the foregoing criteria to this case:

- The nature of Respondents' conduct is egregious. Respondent Brinker's use of the racially derogatory term "nigger" toward Complainants in conjunction with threats and harassment shows that Respondent Brinker easily dehumanizes African Americans.
- There was no evidence introduced by the Commission showing that Respondents had prior history of discrimination.
- Respondent Brinker owns seven properties in Bellaire, Ohio. (Comm. Ex. 9)
- There was no evidence introduced by the Commission showing that Respondents did not cooperate during the investigation.
- Complainants suffered extreme emotional distress as a result of Respondents' racially discriminatory conduct.

22. Based on the foregoing criteria, the ALJ recommends that Complainants be awarded \$10,000.00 in punitive damages.

ATTORNEY'S FEES

23. The Commission is entitled to attorney's fees. R.C. 4112.05(G)(1); *Schoenfelt*, 105 Ohio App.3d at 386. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.
24. In order to create a record regarding attorney's fees, the Commission should file an affidavit from plaintiffs' attorneys in Bellaire 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.
25. If the Commission adopts the ALJ's Report and the parties cannot agree on the amount of attorney's fees, the Commission should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted. Respondents may respond to the Commission's Application for Attorney's fees within 30 days from their receipt of the Commission's and Complainants' Applications.
26. Meanwhile, any objections to this Report should be filed pursuant to the Ohio Administrative Code. Any objections

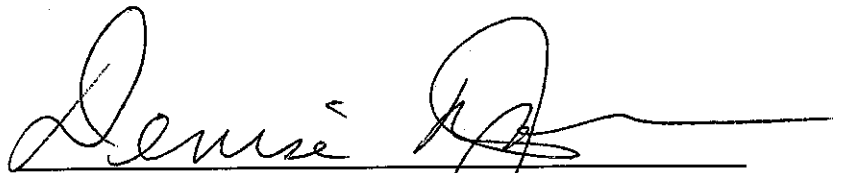
to the recommendation of attorney's fees can be filed with the Commission's Compliance Unit after the ALJ makes her Supplemental Recommendation to the Commission Regarding Attorney's Fees.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 14-HOU-COL-40697 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 Complainants \$50,600.00 in actual damages;
3. The Commission orders Respondents to pay Complainants \$10,000.00 in punitive damages;
4. The Commission orders Respondents, 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 their participation in fair housing training, Respondents shall submit certification from the trainer or provider of services that Respondents have successfully completed the training; and

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

A handwritten signature in black ink, appearing to read "Denise M. Johnson", written over a horizontal line.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW
JUDGE

Date Mailed: June 8, 2016