



OHIO CIVIL RIGHTS COMMISSION

Governor Mike DeWine

Commissioners: Lori Barreras, Chair | Juan Cespedes | William Patmon, III | Dr. Carolyn Peters | Madhu Singh
Executive Director G. Michael Payton

August 27, 2019

James Coolidge

1745 North Cole Street
Lima, Ohio 45801

Complainant

Jill C. Syphrit

404 South Adams Street
Delphos, Ohio 45833

Respondent

Stefan Schmidt, Esq.

Senior Assistant Attorney General
Civil Rights Section
30 East Broad Street, 15th Floor
Columbus, Ohio 43215

Counsel for Commission

Re: James Coolidge v. Jill C. Syphrit
Complaint No. 18-HOU-DAY-26629

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 **September 19, 2019**. *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.



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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, Ohio 43215-3414.** *All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

Desmon Martin /kk

Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Lori A. Anthony, Section Chief – Civil Rights Section/Stefan Schmidt, Assistant Attorney General/Michael Payton, Executive Director/Darlene Sweeney-Newbern, Director of Regional Operations/Stephanie Bostos-Demers, Chief Legal Counsel



IN THE MATTER OF:

James Coolidge
Complainant,

Complaint No. 18-HOU-DAY-26629

v.

Jill C. Syphrit
Respondent.

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

**DAVE YOST
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Respondent

James Coolidge
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Complainant

ALJ'S REPORT

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

INTRODUCTION AND PROCEDURAL HISTORY

James Coolidge (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (the Commission) on August 7, 2017.

The Commission investigated the charge and found probable cause that Jill Syphrit (Respondent) engaged in unlawful discrimination in violation of Ohio Revised Code R.C. 4112.02(H)(1) and (4).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on April 5, 2018.

The complaint alleged that Respondent discriminated against Complainant due to his familial status.

Respondent pro se filed an Answer to the Complaint on May 9, 2018. Respondent denied that she engaged in any unlawful discriminatory practices. Respondent also pled affirmative defenses.

A public hearing was held on January 16, 2019 at the Lima City Hall located at 50 Town Square, Lima, Ohio.

The record contains previously described pleadings, a transcript consisting of 131 pages of testimony, exhibits admitted into evidence

at the hearing, and a post-hearing brief filed by the Commission on May 13, 2019.

FINDINGS OF FACT

The following findings are based, in part, upon the Administrative Law Judge's (ALJ) assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed; each witness's strength of memory; frankness or lack of frankness; and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on August 7, 2017. (Tr. 37, Comm. Ex. 6)
2. The Commission investigated and in a March 15, 2018 letter, notified Respondent that it was probable that Respondent had engaged in unlawful discrimination in violation of R.C. 4112.02(H)(1) and (4).
3. The Commission attempted but failed to resolve this matter by informal methods of conciliation. Respondent failed to sign

the Conciliation Agreement and Consent Order. (Tr. 49, Comm. Ex. 8)

4. Respondent owns and manages rental homes located at 7613 and 7615 Zion Church Road, Elida, Allen County, Ohio. (Tr. 100)
5. The houses have a common driveway, with 7613 located closer to the road and 7615 at the rear of the property with an adjacent pond. (Comm. Exh. 2)
6. Complainant and his wife, Cynthia, signed a two-year lease for the 3-bedroom, two car garage home at 7615 Zion Church Road in 2014. (Tr. 15, 57)
7. The lease ran from November 1, 2015 to October 31, 2016. (Tr. 15, 57)
8. Complainant and Cynthia renewed the lease for another two-year term from November 1, 2016 to October 31, 2018. (Tr. 15, 57, Comm. Ex. 1)
9. The house located at 7613 Zion Church Road, was rented by Connie and Sally Horton. (Tr. 18, 56, Comm Ex. 12)

10. The Hortons had also signed two-year leases with Respondent in 2014 and 2016, respectively. (Comm. Ex. 12)
11. Both the Complainant's and the Hortons' leases restricted the occupancy to the husband and wife and no more than one dog. (Comm. Ex. 1, 12)
12. The Complainant had another neighbor who lived nearby named Jeff Stephens (Stephens). (Tr. 19, 61)
13. The Complainant had one dog which had been agreed to by the Respondent. (Tr. 22, 60)
14. The Hortons had three dogs when they moved into the property at 7613. (Tr. 26, 61)
15. The Hortons' adult son and his girlfriend also lived with the Hortons. (Tr. 82)
16. On January 23, 2017, the Complainant and Cynthia accepted temporary custody of their grandchildren after a domestic incident at the grandchildren's home. (Tr. 29-30, 62, Comm. Ex. 4)

17. The Complainant was told that the children would be removed from their parents' home and placed into foster care. (Tr. 30, 63)
18. Complainant did not want the children placed into the foster care system and told Children's Services that he and his wife would take the children. (Tr. 30)
19. Complainant called the Respondent on January 24, 2017 and told her that he had the children and if this was a problem, he would start looking for somewhere else to live because he was not going to "let my grandkids go to foster homes." (Tr. 30)
20. Jeff Stephens would let Complainant's grandchildren come over and pet his cats.
21. The Hortons' would bring back treats from town for the children. (Tr. 31, 63)
22. Complainant's grandchildren were never allowed back by the pond unless the Hortons were outside or Complainant or his wife were with them. (Tr. 31)
23. Complainant always paid the rent on time and would make small repairs to the house as needed. (Tr. 32- 33, 64-65)

24. On August 5, 2017, Complainant and Cynthia were given a Notice to Leave Premises by August 31, 2017, for violation of the lease agreement. (Tr. 33-34, 65, Comm. Ex. 5)
25. Complainant began looking for a new place to live after receiving the Notice to Leave Premises. (Tr. 34)
26. Before moving, Complainant and his wife sought help from the West Ohio Community Action Partnership ("WOCAP") to obtain funds for a deposit on a new place, as well as deposits for their electric and gas. (Tr. 35, 66)
27. While talking with Heather at WOCAP, Heather informed Complainant that it was illegal for him and his family to be evicted because of the children. (Tr. 35)
28. Complainant and his family moved out of the house located at 7615 Zion Church Road on November 17, 2017.

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

1. The Commission alleged in the Complaint that Respondent subjected Complainant to unequal terms and conditions of renting because of his familial status.
2. These allegations, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

¹ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

It shall be an unlawful discriminatory practice:

(H) For any person to:

(1) (...) refuse to negotiate for the (...) rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of (...) familial status...

(4) Discriminate against any person in the terms or conditions of ... renting ... or use of any housing accommodations ... because of ... familial status,

3. R.C. 4112.01(A)(15) defines "familial status" as:

(a) 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; (...)

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.*, 61 Ohio St.3d 607 (1991). Therefore, reliable, probative, and substantial evidence means evidence sufficient

to support a finding of unlawful discrimination under the federal Fair Housing Act (F.H.A) of 1968, as amended.²

6. R.C. 4112.02(H) and FHA prohibit discrimination in the sale, rental, or financing of dwellings based on familial status.

“Familial status discrimination refers to discrimination against parents or other custodial persons domiciled with children under the age of 18.”
See City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 728 n. 1, 115 S.Ct. 1776, 131 L. Ed. 2d 801 (1995).

7. Absent direct evidence of discrimination, the Commission must establish a prima facie showing of discrimination by a preponderance of the evidence. *McDonnell Douglas v. Greene*, 411 U.S. 792 (1973).
8. 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).

² The Fair Housing Amendments Act of 1988 amended the substantive provisions of the Fair Housing Act of 1968 (Title VIII) to prohibit housing discrimination against families with children. Section 3604(b) of the Fair Housing Act, as amended, makes it unlawful “[t]o discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provisions of services or facilities in connection therewith, because of ... familial status ...” 42 U.S.C. 3604(b).

9. Proof required to establish a prima facie case may vary on a case-by-case basis. *McDonnell Douglas* at 802, n.13.
10. In this case, the Commission may establish a prima facie case of housing discrimination based on the familial status with the introduction of the following evidence:
 - (1) that they are a member of a protected class;
 - (2) that they suffered adverse treatment in regard to housing; and
 - (3) the adverse treatment occurred under circumstances which tend to show that protected status was a motivating factor. *id.*
11. During their tenancy, Complainant and his wife took custody of their five grandchildren under the age of eighteen.
12. Respondent told Complainant that his tenancy was being terminated for violation of the lease agreement: (1) more than two occupants, and (2) more than one dog.
13. The Hortons had a child over the age of 18 living with them and more than one dog but did not receive an eviction notice.
14. The Commission introduced credible evidence to establish a prima face case of housing discrimination based on familial status.

15. The presumption of discrimination 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 [housing action]. *St. Mary Honor Center v. Hicks* (1993), 509 U.S. 502, 511.
16. To meet this burden of production, Respondent 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 housing action].” *Id.* at 507.
17. The Respondent’s articulated reason was that Complainant violated the lease agreement by having more than two occupants and more than one dog.
18. The Respondent also testified that she believed that children were tearing up the property, the neighbors complained about the children, and Complainant made complaints about repairs that ran her bills up.
19. The Commission has the burden to prove that Respondent’s articulated reason is not the true reason but a pretext for illegal housing discrimination. *Secretary, U.S. Dept. of Housing and Urban Development on Behalf of Herron v. Blackwell*, 908 F.2d 864, 870 (1990).

20. The Commission introduced credible evidence to show that the Respondent's articulated reasons for evicting Complainant is pretextual.
21. The Hortons, who were subject to the same lease terms as Complainant, had their adult son living with them and three dogs. (Tr. (Tr. 26, 18, 56,61, Comm Ex. 12)
22. Mr. Horton told the Regina Freeman (Freeman), the investigator for the OCRC, that he had no problems with the Complainant's grandchildren. (Tr. 88)
23. Mr. Horton also told Freeman that he never complained to Respondent about Complainant's grandchildren. (id.)
24. Respondent told Freeman that she just wanted the children out of the house. (Tr. 102)
25. Respondent admitted that she didn't know of any damage the children caused to the house. (Tr. 110)
26. Respondent told Freeman that she believed the children were "running all over the place and tearing up the property and tearing up the place." (Tr. 85, Comm. Ex. 9)
27. R.C. Chapter 4112, like its federal counterpart, requires that housing providers evaluate families with children on their individual circumstances rather than using group stereotypes.

See *HUD v. Schilling*, P-H: Fair Housing-Fair Lending Rptr. ¶25,052 at 25,484 (HUD ALJ 1993) (while landlords are free to seek quiet tenants, they may not exclude families with children because of "stereotypical beliefs" that children are "*per se* noisy"); *HUD v. Jeffre*, P-H: Fair Housing-Fair Lending Rptr. ¶25,020 at 25,254 (HUD ALJ 1991) (respondent's illegal policy of not renting to families with children was based on her view that children will cause "problems" and "a lot of noise")

28. The credible evidence in the record supports the determination that Respondent evicted Complainant because she did not want children under the age of eighteen to be occupants of her rental property.

29. The Respondent has engaged in illegal discriminatory conduct based on familial status in violation of R.C. 4112.02(H)(1) and (4) and the Complainant is therefore entitled to relief as a matter of law.

DAMAGES

When the Commission has proven a violation of the statute, Complainant is entitled to relief. Relief includes an award of actual damages shown to have resulted from the discriminatory action. R.C. 4112.05(G)(1). The statute also provides that the Commission, in its discretion, may assess civil penalties to vindicate the public interest. R.C. 4112.05(G)(1)(b).

ACTUAL DAMAGES

1. The purpose of an award of actual damages in a fair housing case "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).
2. 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).
3. Damages for intangible injuries may be established by

testimony or inferred from the circumstances.³ *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

4. In this case, the Commission presented credible evidence that Respondents' retaliatory conduct caused Complainant actual damages.

Out of Pocket Damages

1. The Complainant had to expend the following amount as a result of being evicted from the home:
 - (1) Rent increased from \$675.00 to \$700.00 per month from 11-17-17 until 1-17-19: \$350.00
 - (2) Security deposit at 1745 North Cole Street, Lima Ohio: \$700.00
 - (3) Had to sell \$2,500 RV for \$1,600 to help pay moving expenses: \$900.00
 - (4) Gas for borrowed trailer for week: \$60.00
 - (5) Travel related to litigation: Approx. 170 miles @ \$.52 per mile: \$60.00
 - (6) Travel related to moving: Approx. 170 miles @ \$.52 per mile: \$92.56

³ 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).

- (7) Help moving: \$125.00
- (8) Increased travel distance for family: Approx. 960 miles @ \$.52 per mile: \$499.20
- (9) Increased travel distance for doctors: Approx. 224 miles @ \$.52 per mile: \$224.00
- (10) Rent to own shed because don't have storage at new place: \$2,500.00
- (11) Deposit on gas (\$175.00), electric (\$177.00), cable (\$172.00)
- (12) Lost wages for Mrs. Coolidge for January 16, 2019: \$121.84

Total: \$6,156.60

(Tr. 43-45, 48, 71-74, Comm. Exh. 7)

Intangible Damages

5. The Commission introduced credible evidence of the emotional distress that Complainant and his wife suffered as a result of being forced to leave the home.
6. The Complainant has COPD. The stress associated with being evicted aggravated his condition and he had to get a CPAP machine and use his rescue inhaler more frequently. (Tr. 41-14, 70)
7. Cynthia thought the move was going to kill her husband. (Tr. 70)
8. For the emotional distress experienced by Complainant, Cynthia, and their grandchildren due to the illegal conduct of Respondent, the ALJ recommends an award of \$10,000.00

Actual Damage Award

9. The ALJ recommends that Complainant be awarded \$6,155.00 for out of pocket damages and \$10,000.00 for the emotional distress Complainant, his wife, and grandchildren suffered as a result of Respondent's illegal conduct for a total actual damage award of \$16,155.00

Civil Penalties

10. When the Commission determines that there has been a violation of R.C. 4112.02 (H), the Commission may assess civil penalties. R.C. 4112.02(5)(b).
11. The purpose of an award of civil penalties is to deter future illegal conduct and punish the offender in order to vindicate the public's interest in the elimination of housing discrimination. *State ex rel. Petro v. Pure Tech Sys.*, 2015-Ohio-1638 (8th Dist. Cuyahoga Cty.)
12. Courts have wide discretion in assessing civil penalties. *Memphis Ctr. for Indep. Living v. Richard & Milton Grant Co.*, 2004 WL 6340158 (W.D. Tenn.)
13. The amount of civil penalties assessed depends on a number of factors, including:
 - 1) the nature of the violation;
 - 2) the degree of culpability;
 - 3) any history of prior violations;
 - 4) the financial circumstances of the defendants;
 - 5) the goal of deterrence; and

6) other matters as justice may require *Id.*

14. Applying the foregoing criteria to this case:

- Respondent's belief that families with children damage property and bother neighbors deprive families with children from the opportunity to self-select where they want to live.
- Respondent's defense to the complaint was that she didn't believe that she did anything wrong. It shows an indifference to R.C. 4112.02(H) that prohibits housing providers from engaging in discriminatory conduct.
- There was no evidence introduced by the Commission of prior violations by the Respondent.
- The Respondent has been a landlord since 2006 and has actively managed rental properties since 2012. (Tr. 95-96, Comm. Exh. 11),
- The Commission has a substantial interest in seeking to deter Respondent and all housing providers from engaging in discriminatory conduct that denies individuals equal opportunity in housing based on their protected status under R.C. 4112.02 (H).
- Based on the foregoing criteria, the ALJ recommends that Respondent be assessed \$5,000.00 in civil penalties.

ATTORNEY'S FEES

15. The prevailing party is entitled to attorney's fees. R.C. 4112.05(G)(1) and (H); *Schoenfelt v. Ohio Civ. Rights Comm.*, 105 Ohio App.3d at 379. ⁴
16. In the instant case the Commission is the prevailing party.
17. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.
18. In order to create a record regarding attorney's fees, the Commission should file an affidavit from plaintiff's attorneys in Allen 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.
19. 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

⁴ If the commission finds that a respondent has not engaged in any unlawful discriminatory practice against the complainant or others it may award to the respondent reasonable attorney's fees to the extent provided in 5 U.S.C. 504 and accompanying regulations. R.C. 4112.05 (H)

to the Commission's Application for Attorney's fees within 30 days from their receipt of the Commission's and Complainant's Applications.

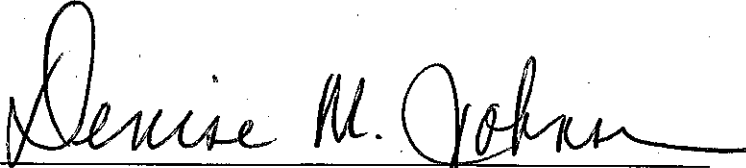
20. Meanwhile, any objections to this Report should be filed pursuant to the Ohio Administrative Code. Any objections to the recommendation of attorney's fees can be filed with the Commission's Compliance Unit after the ALJ makes her Supplemental Recommendation to the Commission Regarding Attorney's Fees.

RECOMMENDATIONS

For all the foregoing reasons, it is recommended in Complaint No. 18-HOU-DAY-26629 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 Complainants \$16,155 in actual damages;
3. The Commission orders Respondent to pay the Commission \$5,000.00 in civil penalties;
4. The Commission orders Respondent, 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 participation in fair housing training, Respondent shall submit certification from the trainer or provider of services that Respondent has successfully completed the training; and

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


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: August 27, 2019

DMJ/kk