



OHIO CIVIL RIGHTS COMMISSION

Governor Mike DeWine

Commissioners: Lori Barreras, Chair | William Patmon, III | Dr. Carolyn Peters | Madhu Singh
Executive Director Angela Phelps-White

October 30, 2020

Donna Sargeant

4637 Herner County Line Road
Southington, Ohio 44470

Complainant

Alden B. Chevlen, Esq.

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Youngstown, Ohio 44515

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Counsel for Commission

**Re: Donna Sargeant v. V.T. Larney Ltd., Equity Management, LLC and Vince T. Larney
Complaint No. 19-HOU-AKR-39402**

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 **November 23, 2020**. *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: Angela Phelps-White, Executive Director/Darlene Sweeney-Newbern, Director of Regional Operations/Stephanie Bostos-Demers, Chief Legal Counsel



IN THE MATTER OF:

Donna Sargeant
Complainant,

Complaint No. 19-HOU-AKR-39402

v.

V.T. Larney Ltd., Equity Management, LLC and Vince T. Larney
Respondent.

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

**DAVE YOST
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Donna Sargeant
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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

Donna Sargeant (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on January 30, 2018.

The Commission investigated the charge and found probable cause that unlawful discriminatory practices had been engaged in by Respondents Vince T. Larney (Larney), V.T. Larney, Ltd. (VTL), and Equity Management, LLC (EMLLC) in violation of R.C. 4112.02(H)(1), (4), and (19).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on January 11, 2019.

On February 25, 2019 the Commission filed a motion to amend the complaint pursuant to R.C. 4112.05 (C)(1) (b) to, inter alia, clarify the statutory provisions that related to the allegations in the complaint.¹ The amended complaint alleged violations of R.C. 4112.02 (H)(1), (8), and (19).

¹ The ALJ issued an order granting the Commission's Motion to Amend the Complaint on March 5, 2019.

The Commission alleged in the amended complaint that Respondent subjected Complainant to unequal terms and conditions of renting because of familial status and maintained a policy that failed to take into consideration those with disabilities that require the assistance of animals.

Respondents filed an answer to the amended complaint on May 2, 2019. Respondents admitted certain procedural allegations but denied that they engaged in any unlawful discriminatory practices.

A public hearing was held on September 26, 2019 at the Mahoning County Bar Association located at 114 East Front Street, Suite 100, Youngstown, Ohio.

The record contains previously described pleadings, a transcript consisting of 246 pages of testimony, exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on December 10, 2019. The Respondent did not file a post hearing brief.²

² On March 16, 2020 the Commission and Respondent filed a Joint Motion to Stay the hearing in OCRC v. Equity Management I, LLC and Vincent T. Larney and V.T. Larney, II, Ltd. Complaint No. 19-HOU-SET-00002 and a stay of the issuance of the ALJ's Report and Recommendation in Complaint No. 39402. The motion was based on the parties' agreement to attempt mediation in Complaint No.00002. An order granting the motion to stay was issued on March 18, 2020. In July 2020, the Commission notified the ALJ that the attempt to mediate failed.

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 January 30, 2018.
2. The Commission determined on November 15, 2018 that it was probable that Respondents engaged in unlawful discrimination in violation of R.C. 4112.02(H) (1), (8) and (19).
3. The Commission attempted but failed to resolve this matter by informal methods of conciliation. (Comm. Exh. 1, Requests for Admissions 1-8)

4. In October 2017, Complainant and her two children lived at 3637 Herner County Road in Southington, Ohio. (Tr. 52)
5. Complainant worked five days a week at Sodexo/Roth located at 3897 Crum Road as a billing co-ordinator. (id)
6. Complainant's commute to her workplace was 26.3 miles which was over a half hour drive from her home.
7. Complainant wanted to locate a house that was closer to her workplace so she could reduce her gasoline expense and reduce her travel time. (Tr. 52, 75)
8. Complainant began searching for housing options online and came across an advertisement for a house located at 132 E. Liberty Street in Hubbard, Ohio. (Tr. 52-54, Comm. Exh. 2, 4)

"Come and see this cute 2 Bedroom with and extra room that could be used for extra storage or office space. Located at 132 E. Liberty Street in Hubbard in nice neighborhood. Home is updated throughout with new windows, carpet, new bathroom, new kitchen. For more information or to schedule a viewing contact the office of Equity Management [Respondent EMLLC] at 330-759-0796 or 330-759-2218." (Comm. Exh. 2)

9. Respondent EMLLC is owned by Respondent Larney.³ (Tr. 149-156)
10. The house was located 12.6 miles from her workplace and met her housing needs. (id.)
11. Complainant did not see an application attached to the advertisement online. (Tr. 72)
12. During 2017, the on-line application that Respondent Larney used for properties owned and managed by Respondents included an entry where applicants were asked if they have dependents. (Tr. 19-20, 38-39) (Comm. Exh.14)
13. If an applicant had dependents, he or she was also asked for the relationship and date of birth of the dependents. (id.)
14. On October 9, 2017, Complainant called the number in the advertisement at 8:24 AM and spoke with a female about viewing the property located at 132 East Liberty Street in Hubbard. (Tr. 55-59) (Comm. Exh. 5)

³ Respondent Larney owns 95% of EMLLC and his wife owns 5%. Although his wife has a small ownership interest, Respondent Larney only manages properties that he chooses to purchase and rent.

15. Guy DiCenso (DiCenso) and Wendy Fassoulas (Fassoulas) worked for Respondent EMLLC in 2017. (Tr. 104-105, 162)
16. Fassoulas's work in the office was to answer the telephone and pass on information to Respondent Larney regarding potential tenants. (Tr. 113)
17. Respondent Larney would sometimes have Ms. Fassoulas take pictures of rental properties, show properties, and lease them out. (Tr. 163)
18. Respondent Larney and Fassoulas both worked at the same desk and had two monitors and telephones. (Tr. 125)
19. DiCenso was a subcontractor whose position was to collect bad debts and he worked in the office. (Tr. 104-105, 162) (Comm. Exh. 7-9)
20. DiCenso worked in an upstairs office but would come down to the downstairs office where Respondent Larney and Fassoulas worked. (id.)
21. The woman who answered the phone told Complainant she would have to speak directly to Respondent Larney to set up an appointment. (id.)

22. The woman transferred the call to Respondent Larney who spoke to Complainant about viewing the property. (Tr. 60)
23. Complainant asked Respondent Larney about an application and he informed her that the applications are given out at the viewing of the property. (id.)
24. Respondent Larney told Complainant the rental amount and asked Complainant what her salary was and told her to bring her pay stubs to the viewing. (Tr. 61, 80)
25. Respondent Larney then asked Complainant how many people would be living in the property. (Tr. 61, 81)
26. Complainant told Respondent Larney that it would be herself and her two children. (id.)
27. Respondent Larney then asked Complainant the ages of her children, who were 7 (seven) and 1 (one) year old at the time. (id.)
28. Complainant and Respondent Larney set up a time to view the property, agreeing to meet the following day, October 10, 2017 after Complainant got off work at 6:00 PM. (id.)

29. Complainant and Respondent Larney agreed upon a viewing time between 6:30 and 7:00 PM. (id.)
30. Before the call ended, Respondent Larney told Complainant that she would hear from him the next day to confirm. (Tr. 62)
31. After Complainant first spoke to Respondent Larney on October 9th she thereafter twice called the office because she had questions about the utilities. (Tr. 62-63)
32. Complainant did not speak to Respondent Larney during either of the calls. (id.)
33. Complainant returned a call from a voicemail message left by Respondent Larney on October 10, 2017 regarding the viewing that had been scheduled for that evening. (Tr. 64-65)
34. Respondent Larney told Complainant that she had to have her children with her at the viewing of the property. (Tr. 65, 81).
35. Complainant was surprised because she had never had anyone ask her that before. (Tr. 66)
36. Complainant asked Respondent Larney why her children had to be there since they were under 18 and would not be on the lease. (id.)

37. Respondent Larney indicated that this was their policy and they always ask to see the children. (id.)
38. Complainant was disturbed and alarmed by Respondent Larney's insistence and felt like she was being forced to bring her children to the viewing. (id.)
39. Complainant told Respondent Larney that she was sorry, but she was not going to bring her children to the viewing. (id.)
40. Respondent Larney responded by again telling Complainant that it was their policy, "to always see the children." (Tr. 66-67)
41. Complainant was angry and disturbed and informed Respondent that what he was requiring her to do sounded like discrimination. (Tr. 67)
42. Respondent Larney was irritated by Complainant's refusal and told Complainant that he would call her back later to confirm the appointment then ended the call. (Tr. 68)
43. Complainant did not receive a call back from Respondent Larney. (Tr. 68-69).

44. Complainant did not go to the property between 6:30 and 7:00 because she was waiting for Respondent Larney's call to confirm their appointment. (Tr. 70-71)
45. Complainant kept looking for another house after she was not called back by Respondent Larney but did not find another rental property that had the same rent and the same number of rooms as the property listed by Respondent EMLLC at 132 E. Liberty Street in Hubbard. (Tr. 72-73)
46. In late October of 2017 two co-applicants submitted an online application to rent the house at 132 E. Liberty Street. (Tr. 210-212) (Comm. Exh. 19-20)
47. The applications asked if the applicants had dependents and neither provided the names of dependents on the applications. (id.)
48. The applicants were approved, signed the lease on November 17, 2017 with a move in date on December 1, 2017. (Comm. Exh. 21)
49. Complainant filed a charge of discrimination with the Commission on January 30, 2018. (Tr. 73) (Comm. Exh. 6)

50. During the Commission's investigation of Complainant's charge, the Commission received a copy of Respondent EMLLC's Tenant Rules and Regulations that contained a rule stating "no pets or animal of any kind (Resident or Visiting)" with no written exception for service animals or emotional support animals.⁴ (Tr. 35-36) (Commission Exh. 12)

⁴ R.C. 4112.02 (H)(19) and O.A.C. 4112 -5-07(C) require an exception for animals that assist the disabled. R. 4112.02(H)(7) makes it unlawful to print, publish, or circulate any preference, limitation, specification, or discrimination based upon disability.

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.⁵

1. The Commission alleged that Respondents subjected Complainant to unequal terms and conditions of renting because of her familial status and maintained a policy that failed to take into consideration those with disabilities that require the assistance of animals.
2. These allegations, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that it shall be an unlawful discriminatory practice for any person to:

(1) (...) refuse to negotiate for the (...) rental of

⁵ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

housing accommodations, or otherwise deny or make unavailable housing accommodations because of (...) familial status...

(8) (...) make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning (...), familial status, (...)

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

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. 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).

5. 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.⁶

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. Violations of R.C. 4112.02 (H) not only apply to explicit denials but also encompasses conduct that would “otherwise make unavailable housing accommodations unavailable “because of the protected status of the person.

Miami Valley Fair Housing Center, Inc v Connor Group, 805 F. Supp.2d 396 (advertising for an apartment complex indicating a preference or limitation on the basis of familial status), *Ohio Civil Rights Commission v. Myers*, 201-Ohio-144 (C.A. 2e) (a hearing impaired tenant of an apartment complex who was harassed and intimidated by neighbors)

⁶ 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).

8. 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).
9. Absent direct evidence of discrimination, the Commission must establish prima facie showing of discrimination by a preponderance of the evidence. *McDonnell Douglas v. Greene*, 411 U.S. 792 (1973).
10. 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).
11. Proof required to establish a prima facie case may vary on a case-by-case basis. *McDonnell Douglas* at 802, n.13.
12. 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 Complainant is a member of a protected class;
 - (2) that Complainant suffered adverse treatment in regard to housing; and
 - (3) the adverse treatment occurred under circumstances which tend to show that Complainant's protected status was a motivating factor. *id.*

13. In 2017 the Complainant was the custodial parent of two children under the age of eighteen.
14. In October 2017, Complainant found an online advertisement for one of Respondents' rental properties that was a shorter distance to her work location than from where she resided.
15. On October 9, 2017, Complainant called the number in the online ad and was transferred to Respondent Larney. (Tr. 55-59) (Comm. Exh. 5)
16. Complainant asked Respondent Larney about an application and he informed her that the applications are given out at the viewing of the property. (id.)
17. Respondent Larney conditioned the Complainant viewing the property and receiving an application upon her bringing the children with her.
18. Complainant refused to bring her children to the viewing and Respondent Larney insisted that Complainant do so because that was his policy.
19. Although it was a standard practice for Respondent Larney to call to confirm prior to appointments, Complainant did not

receive a call from Respondent Larney. (Tr. 65-71, 94-95, 196-197, 199-201)

20. The Commission introduced credible evidence to establish a prima facie case of housing discrimination based on familial status.
21. 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.
22. 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 housing action].” *Id.* at 507.
23. The Commission has the burden to prove that Respondents’ 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).

24. The Respondents did not file a brief setting forth its articulated reasons for not calling Complainant to confirm the appointment.
25. Respondent Larney asserts that neither he or the Respondents had a practice or policy of asking potential applicants the ages of their children, only asking how many people would be living in the residence with the applicant. (id.)
26. I found Respondent Larney's testimony incredible.
27. The Commission introduced credible evidence that Respondent Larney was involved in all aspects of Respondents' business practices. Tr. 99, 150, 155) (Tr. 135)
28. Respondent Larney has been in the business of residential real estate for about 32 years and through the business apparatuses of Respondents VTL and EMLLC has amassed 500 plus units located primarily in Trumbull and Mahoning Counties. (Tr. 98)
29. Although Respondents real estate holdings are substantial, Respondent Larney prepares the leases, reviews the applications himself, and makes the day-to-day decisions. (Tr. 99, 150, 155) 104, 156, 162)

30. When a potential tenant would call and was interested in renting a property, Respondent Larney would talk to that person on the phone. (Tr. 172)
31. Respondent Larney testified that he wanted all of the people who would be living in the residence at the viewing because he saw his “job as a home facilitator”.

“Q: Did you typically ask to meet all the people that would be living in the house?”

A: Yes.

Q: You did that?

A: Yes.

Q: Let’s get it out in the open. Why did you do that?

A: Well, if someone says, okay, I want to rent the house and then more people move in, you want on the lease exactly who is going to be living in the house. Also, you like to find out if that family is going to be a fit for the home. I have 250 homes. I mean, if they want another home that – that, one, if the kids look at it and say the bedroom is too small, this is wrong, that’s wrong, we’ll go to another house. We’ll make the kids happy because then that makes the whole family happy once the kids are happy. You get them in a house that they don’t like, sometimes they’re only going to be there for year, six months. You want to find a house that they’re happy with, and they’ll stay there for five or six years, during the

whole school term, usually. That's usually what the people rent my homes for. They move into an area. They like the school. They like the home. The kids like the home. They're there for six years. And that's what you strive for. You try to strive for something that the family -- my job is a home facilitator. I want to find something that people are happy with. So, if I ask questions that -- I'm just trying to get to the root of what home I should put them in that they'll be the happiest."

(Tr. 110-111)

32. After the Complainant filed a charge, Tameka Brooks (Brooks), a Commission investigator, requested a position statement from Respondents. (Tr. 28) (Comm. Exh 1)

33. The Respondents' position statement stated, inter alia, the following:

"(w)hen Complainant stated that she had 2 children who would be living with her, Mr. Larney asked their ages. This is a question that he often asks as he is concerned about potential property damage and loud noises sometimes occurring when children (of varying age) reside in his properties." (Comm. Exh 1)

34. Brooks spoke to DiCenso on March 6, 2018 and to Fassoulas on July 31, 2018 and took notes of the conversations. (Tr. 28-32) (Comm. Exh. 7 & 9)

35. DiCenso called Brooks to provide information after he received documentation about the charge filed by Complainant. (Tr. 28-32)
36. Brooks wrote that DiCenso told her that “Respondent did have a practice of having general conversations with prospective tenants and they do ask the age of the children.” (Tr. 28-32) (Comm. Exh. 7)
37. Brooks wrote that Fassoulas told her that “Respondent did ask families to bring all parties who was going to stay to view the unit because depending on the ages of the children it determined where they would be placed.” (Tr. 28-32) (Comm. Exh. 9)
38. Additionally, Brooks wrote that Fassoulas said that “if there was a home where they replaced a lot of things and it was nice in a nice neighborhood Respondent would not show or rent it to families with certain age kids because they did not want them to tear up the property.” (id.)
39. I found Brooks’ testimony to be credible
40. It is reasonable to infer that instead of being a “home facilitator” to help families, Respondent Larney’s application process was designed to help him select housing to facilitate

his own stereotypical beliefs about families with dependent children.

41. The credible evidence in the record supports a determination that Respondents subjected Complainant to unequal terms and conditions of renting because of her familial status in violation of R.C. 4112.02(H) (1), and (8).

42. Therefore, the Complainant is entitled to relief as a matter of law.

43. Additionally, Respondents maintained a policy that failed to take into consideration those with disabilities that require the assistance of an animal in violation of R.C. 4112.02(H) (19).

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 assess civil penalties to vindicate the public interest. R.C. 4112.05(G)(1)(b).

ACTUAL DAMAGES

3. 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).
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)

TANGIBLE DAMAGES

5. The Commission introduced the following credible evidence of the economic loss that Complainant suffered because of the additional mileage that Complainant had to travel because she was denied rental at 132 E. Liberty St.⁷
 - Complainant' additional round trip mileage from home to work 5 days a week, 27.4 miles a day for a total of 137 extra miles a week based on the IRS mileage reimbursement rates from December 2017, 2018, and 2019 - \$8,293.02

⁷ 132 E. Liberty Street was rented and occupied by tenants starting on December 1, 2017. (Tr. 48, 50-54, 72, 74-76, 82), mileage calculations, (Comm. Exh. 3 & 4)

INTANGIBLE DAMAGES

6. The Commission introduced credible evidence of the emotional distress and humiliation that Complainant suffered because of Respondent Larney's discriminatory policy.

“Q: And how did you feel about this insistence by Mr. Larney that he had to see your children before viewing?”

A: Well, I felt very disturbed and alarmed at that point. I mean, being a mother and someone is pretty much forcing you to bring your kid before you're able to view a rental property. I've never had that happen before.

Q: So, what did you say after Mr. Larney said that's our policy, always have to bring your—the kids?

A: I told him, I'm sorry, but I'm not bringing my children to be viewed. You know, he just again that that was their policy, to always see the children.

Q: And what did you say when he confirmed that this was the policy always to see the children?

A: I told him that it sounded like discrimination.

Q: Why did you feel like it sounded like discrimination? Like, why did you say that to him?

A: To pretty much hold, you know, that over me before I'm able to see the property and to keep asking to see my children, that's exactly what it

is. I mean, that should be a factor. They're not going to be on the lease.

Q: And how were you feeling as this conversation was—

A: Very angry, and disturbed.” (Tr. 66-67)

7. Complainant testified that she felt very angry because although she had heard about discrimination, she had never experienced it firsthand. (Tr. 73)
8. The ALJ recommends an award to Complainant of \$10,000.00 for emotional distress and humiliation.

CIVIL PENALTIES

9. 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).
10. 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.)

11. Courts have wide discretion in assessing civil penalties.
Memphis Ctr. for Indep. Living v. Richard & Milton Grant Co.,
2004 WL 6340158 (W.D. Tenn.)

12. 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.*

13. Applying the foregoing criteria to this case:

- Respondent has been the business of residential real estate for about 32 years. (Tr. 98)
- Respondent currently has 500 plus units located primarily in Trumbull and Mahoning Counties. (id.)

- Respondent has purchased approximately fifty (50) properties a year since 2010.
- Of Respondent's 500-plus units that he rents, twenty-five (25) to thirty-five (35) percent are rented to families. (Tr. 130)
- Respondent also has an occupancy rate of eighty-three point seven (83.7) percent in the properties owned by V.T. Larney, Ltd. and managed by Equity Management. (Tr. 160) (Comm. Exh. 16)
- The occupancy rate for those properties increases to ninety (90) percent if newer properties under renovation are filtered out. (Tr. 161)
- Respondent Larney testified that he enlisted help from a landlord association to prepare the applications and leases and used the services of a local attorney. (Tr. 98)
- In 2018, Respondent received training from the Commission on housing discrimination which included familial status and service animals. (Tr. 103, 145-149)

- After Brooks received Complainant's charge, she received a second charge against the Respondents. (Tr. 38)
- Brooks subpoenaed documents from the Respondents and received a copy of Respondent EMLLC's online rental application that had been filled out by an applicant and submitted on March 25, 2019. (id) (Comm. Exh. 14)
- The 2019 online application asked if the applicants had dependents. (id.)
- If the applicant had dependents, he or she was also asked for the relationship and date of birth of the dependents. (id.)
- Although Respondent Larney received help from a landlord association and a local attorney, and training from the Commission, it is reasonable to infer that it did not have an impact on Respondents' compliance with the state's statutory prohibitions against housing discrimination.
- There was no evidence introduced by the Commission of prior violations by the Respondents.

- The Commission has a substantial interest in seeking to deter Respondents and all housing providers from engaging in discriminatory housing conduct which is prohibited by R.C. 4112.02 (H).

14. Based on the foregoing criteria, the ALJ recommends that Respondent be assessed \$10,000.00 in civil penalties.

ATTORNEY'S FEES

1. 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. ⁸
2. In the instant case the Commission is the prevailing party.
3. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.
4. In order to create a record regarding attorney's fees, the Commission should file an affidavit from plaintiff's attorneys in Trumbull 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.
5. If the Commission adopts the ALJ's Report and the parties cannot agree on the amount of attorney's fees, the Commission

⁸ 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)

should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted.

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

OBJECTIONS

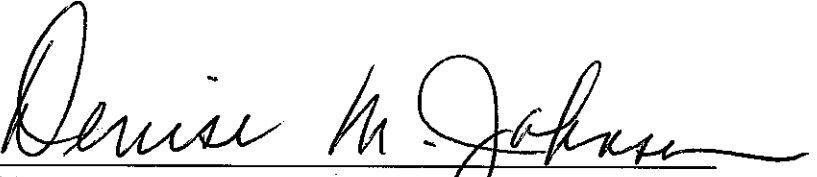
7. Objections to ALJ's Report & Recommendation should be filed pursuant to the Ohio Administrative Code.
8. Objections to the recommendation of attorney's fees can be filed with the Commission's Compliance Unit after the ALJ makes a Supplemental Recommendation to the Commission regarding Attorney's Fees.

RECOMMENDATIONS

For all the foregoing reasons, it is recommended in Complaint No. 19-HOU-AKR-39402 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 \$18,293.02 in actual damages;
3. The Commission orders Respondents to pay the Commission \$ 10,000.00 in civil penalties;
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.


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: October 30, 2020