



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

Jasmaine Barry
3124 North Erie
Toledo, Ohio 43611
Complainant

Roy and Tamara Jackson
5816 Viramar Road
Toledo, Ohio 43611
Respondents

Susan Sharkey, Esq.
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Counsel for Commission

Re: Jasmaine Barry v. Roy and Tamara Jackson
Complaint No. 19-HOU-TOL-39069

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 22, 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:

Jasmaine Barry
Complainant,

Complaint No. 19-HOU-TOL-39069

v.

Roy and Tamara Jackson
Respondents.

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

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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

Jasmaine Barry and her minor son, M.P. (Complainants) filed a sworn charge affidavit with the Ohio Civil Rights Commission (the Commission) on March 9, 2018.

The Commission investigated the charge and found probable cause that Roy and Tamara Jackson (Respondents R. Jackson & T. Jackson) engaged in unlawful discrimination in violation of Ohio Revised Code R.C. 4112.02(H)(19).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on February 22, 2019.

The complaint alleged that Respondents denied Complainants a reasonable accommodation by denying their request for an emotional support dog.¹

¹ COUNT 1 – DISCRIMINATION ON THE BASIS OF PROTECTED CLASS PURSUANT TO R.C. 4112.02(H)(19) AND OHIO ADM. CODE 4112-5-07(C)

11. At all times relevant to this complaint, Complainant resided in the lower unit of the duplex located at 827 Woodward Avenue, Toledo, Ohio.
12. Complainant has a minor son, M.P., who at all times relevant to this Complaint, resided with her at the subject property.
13. M.P. is a person with a disability.

Respondents filed an Answer to the Complaint on March 11, 2019. Respondents admitted certain procedural allegations but denied that they engaged in denial of a reasonable accommodation. Respondents also pled affirmative defenses. Respondents represented themselves pro se.

A public hearing was held on November 6, 2019 at the Ohio Civil Rights Commission's Toledo Regional Office located at 640 Jackson Street, Suite 936, Room 12C, Toledo, Ohio.

The record contains previously described pleadings, a transcript consisting of 280 pages of testimony, exhibits admitted into evidence at the hearing, post-hearing briefs filed by the Commission on March 20, 2020, Respondents on April 13, 2020, and the Commission's reply brief filed on April 21, 2020.

In the Commission's post hearing brief, the Assistant Attorney General moved the ALJ to amend the complaint to conform to the

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14. In or about December 2017, Complainant acquired an animal assistant for M.P.
 15. On or about March 8, 2018, Complainant provided to the Respondents information verifying M.P.'s disability, his need for an accommodation in the form of an animal assistant and describing the therapeutic benefit of the animal assistant.
 16. On or about March 9, 2018, Respondent Tamara Jackson advised Complainant that the dog could be kept, but only if a \$100.00 deposit were paid and a \$50.00 per month charge were added to the rent.
 17. Respondents' failure to accommodate M.P.'s disability is a violation of R.C. 4112.02(H)(19) and Ohio Adm. Code 4112-5-07(C).

evidence pursuant to Oh. R. Civ. P. (15) based on the assertion that evidence became clear “ throughout the hearing in this matter” to support a violation of R.C. 4112.02 (H) (12).² R.C. 4112.05 (C) (1) (b) states in pertinent part that complaints arising under R.C. 4112.02 (H) “may be amended at any time up to *seven days prior to the hearing and not thereafter.*” (emphasis added)

The Commission’s motion is therefore **DENIED**.

² R.C. 4112.02(12) Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by division (H) of this section;

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. Jasmaine Barry ("Complainant") filed a sworn charge affidavit with the Commission on March 9, 2018.
2. The Commission determined on December 13, 2018 that it was probable that Respondents engaged in unlawful discrimination in violation of R.C. 4112.02 (H)(19).
3. The Commission attempted but failed to resolve this matter by informal methods of conciliation.

4. Respondents Roy (Respondent R. Jackson) and Tamara Jackson (Respondent T. Jackson) own a duplex with an upper and lower level located at 827 Woodward Avenue, Toledo, Ohio 43608. (Tr. 15, 71)
5. Somewhere in the middle of October 2017 Complainant saw Respondent R. Jackson outside of the duplex. There was no for rent sign on the property. (Tr. 71)
6. Complainant talked to Respondent R. Jackson and inquired about renting. (id.)
7. Respondent R. Jackson told Complainant that he did not handle the part of the business regarding the application and he had to talk to Respondent T. Jackson. (id)
8. Complainant contacted Respondents and Respondent R. Jackson dropped off the rental application at the house that Complainant was residing at. (Tr. 71-72) (Comm. Exh. B)
9. Complainant completed the Rental Application and on October 21, 2017 Respondent R. Jackson picked it up from the Complainant. (id.)

10. Complainant signed a lease on November 5, 2017. (Tr. 106-107) (Comm. Exh. D)
11. Complainant and her four (4) minor children moved in on or about November 17, 2017.
12. Complainant's 10-year-old son, M.P. had been suffering from mental health issues since he was 5 years old. (Tr. 17, 137)
13. M.P. has two forms of ADHD, a developmental delay, and numerous different mental disabilities. (id.)
14. M.P. was seeing a therapist, Veronica Casper (Casper) from A Step Beyond, an outpatient facility. (Tr. 16-17) (Comm. Exh. F)
15. Casper prescribed an emotional support animal (ESA) to M.P. and provided a letter dated November 28, 2017 to Complainant stating this. (Tr. 17-18, 137) (Comm. Exh. F)
16. Complainant provided Respondents with a copy of the letter. (id.)
17. Respondents requested a letter that contained Casper's phone number and signature. (id.)

18. On December 21, 2017, Complainant sent a text message to Respondent T. Jackson indicating that she had the signed letter from Casper. (Tr. 17-18) (Comm. Exh. D)
19. On December 24, 2017, Complainant obtained an 8-month-old pit bull ESA for M.P. (Tr. 19-20)
20. Complainant was told that she could get an animal that M.P. would have a chance to bond with. (id.)
21. M.P.'s behavior improved. M.P. was able to maintain a schedule. He was also able to go outside and play with other children. (Tr. 21)
22. Respondent R. Jackson was in Complainant's unit and saw the dog. (Tr. 24)
23. Respondent R. Jackson petted the dog upon seeing it, and remarked that it was cute. (id.)
24. On February 1, 2018, Respondent T. Jackson was at the duplex to pick up the rent. (Tr. 27)
25. Respondent T. Jackson saw M.P. standing in the duplex with the dog and inquired why the dog was there. (id.)

26. During this encounter, Respondent T. Jackson issued Complainant a handwritten one week notice to vacate. (id.) (Comm. Exh. H)
27. Respondent T. Jackson told Complainant that she had one week to get rid of the dog. (Tr. 29)
28. Complainant told Respondent T. Jackson that she would not be getting rid of the dog because the dog was prescribed to M.P. (id.)
29. Respondent T. Jackson accused Complainant of lying about the dog being prescribed to M.P. (Tr. 30, 187-188)
30. This exchange caused M.P. to get into the closet with the dog and lock himself inside. (Tr. 28)
31. Complainant had to call M.P.'s therapist to come over and talk M.P. out of the closet. (id.)
32. In March 2018, Complainant called Respondent T. Jackson to find out if she should give her rent to Respondent R. Jackson as he was at the duplex at the time. (Tr. 31)
33. Respondent T. Jackson asked if the dog was still at the duplex. (Tr. 31-32) (Comm. Exh. K)

34. Complainant informed Respondent T. Jackson that the dog was still at the unit. (id.)
35. Complainant recorded the phone call between them on her cell phone. (Tr. 32, 38) (Comm. Exh. J, K)
36. During this call, Complainant continued to tell Respondent T. Jackson that the dog was a prescribed ESA. (Comm. Exh. J, K)
37. Respondent T. Jackson denied that the dog was prescribed and told Complainant repeatedly that Complainant and M.P. could only keep the dog if Complainant signed an addendum to her lease and paid a pet deposit of \$100.00 and a monthly fee of \$50.00. (id.)
38. The Respondents did not assess additional fees for Complainant M.P.'s ESA. (Tr. 113-114, 121, 196, 206, 208)
39. Complainant gave Respondent T. Jackson notice in August that she intended to move out in September 2018. (Tr. 118)
40. Complainant had already begun to move out of the premises on September 1, 2018. (Tr. 195-196)

41. On September 7, 2018, Respondent T Jackson taped a Notice to Leave Premises on Complainant's door. (Tr. 54, 193-194) (Comm. Exh. M)

42. The Notice indicated that the grounds for the eviction was failure to pay rent. (id.)

43. Complainant vacated the premises without paying the back rent that she owed and the rent for the month of September 2018. (Tr. 113-114)

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.³

1. The Commission alleged in the complaint that Respondents denied Complainants housing accommodations because of her minor son's disability in violation of R.C. 4112.02(H)(19).

2. These allegations, if proven, would constitute violations of R.C. 4112.02(H)(19) which provides that it is an unlawful discriminatory practice for any person to:
 - (1) Refuse to (...) rent, lease, sublease, (...), refuse to negotiate for (...) rental of housing accommodations, or otherwise deny or make

³ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

unavailable housing accommodations because of (...), disability, (...);

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

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

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

4. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02(H) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

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, 609, 575 N.E.2d 1164, 1167 (1991). 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. These standards require the Commission to first prove a *prima facie* case of discrimination. *McConnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 1819, 36 L.Ed.2d 668 (1973). Proof required to establish a *prima facie* case may vary on a case-by-case basis. *Id.* At 802, 5 FEP Cases at 969, n. 13.

The *prima facie* case serves an important function in the litigation: it eliminates the most common nondiscriminatory reasons for the [adverse action]....[T]he *prima facie* case “raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors.” *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254, 101 S.Ct. 1089, 1094, 67 L.Ed.2d 207 (1981), citing *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 577, 98 S.Ct. 2943, 2949, 57 L.Ed.2d 957 (1978) and *Teamsters v. United States*, 431 U.S. 324, 358, and n. 44, 97 S.Ct. 1843, 1866, n. 44, 52 L.Ed.2d 396 (1977).

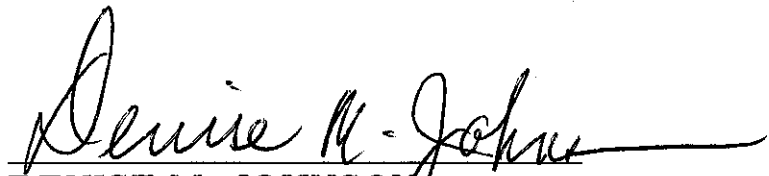
7. In this case, the Commission may establish a *prima facie* case of housing discrimination based on the individual’s disability by proving that:

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

8. After the Commission establishes a prima facie case of housing discrimination based on Complainant M.P.'s disability, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason to rebut the presumption of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).
9. In the instant case the Commission failed to establish the last element of a prima facie case of housing discrimination based on disability/failure to accommodate because the Respondents permitted Complainants to have an AA without charging additional fees.

RECOMMENDATION

For all the foregoing reasons, it is recommended that the Commission issue a Dismissal Order in Complaint Number 19-HOU-39069.


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: October 30, 2020

DMJ/kk