



OHIO CIVIL RIGHTS COMMISSION

Governor Mike DeWine

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

January 6, 2021

Robin Pickell

401 South Washington Street
Greenfield, Ohio 45123

Complainant

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Counsel for Commission

**Re: Robin Pickell v. Albert Bray, Owner
Complaint No. 19-HOU-COL-46168**

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 **January 29, 2021**. *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:

Robin Pickell
Complainant,

Complaint No. 19-HOU-COL-46168

v.

Albert Bray, Owner
Respondent.

**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

Robin Pickell (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on June 12, 2018.

The Commission investigated the charge and found probable cause that unlawful discriminatory practices had been engaged in by Albert Bray (Respondent) in violation of R.C. 4112.02(H) (4), and (12).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on April 8, 2019.

Respondent filed an answer to the complaint on August 26, 2019. Respondent admitted certain procedural allegations but denied that he engaged in any unlawful discriminatory practices.

A public hearing was held on January 8, 2020 at the Ross County Court of Common Pleas, Ross County Commissioner's Chambers located at 2 North Paint Street, Chillicothe, Ohio and on February 27, 2020 at the Ross County Public Library located at 28 North Paint Street, Chillicothe, Ohio.

The record contains previously described pleadings, a two volume transcript consisting of 293 pages of testimony, exhibits admitted into evidence at the hearing, and post-hearing briefs filed

by the Commission on June 17, 2020, by Respondent on July 21, 2020 and the Commission's reply brief filed on July 30, 2020.

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 June 12, 2018.
2. The Commission determined on January 10, 2019 that it was probable that Respondent engaged in unlawful discrimination in violation of R.C. 4112.02(H) (4) and (12).
3. The Commission attempted but failed to resolve this matter by informal methods of conciliation.

4. Respondent is eighty one years old (81) and owns several rental properties in and around Ross County. (Tr. 67-79, 255) (Comm. Exh. 2)
5. Several of the properties owned by Respondent were occupied by residents who did not pay rent or did not pay the full rental amount and were not evicted. (Tr. 73-74)
6. Respondent had female tenants who offered to pay their rent with sex. (Tr. 104-106).
7. Lisa Redmond was a tenant who offered to pay her rent with sex and moved into Respondent's house with him. (Tr. 105)
8. One of Complainant's friends, Nicole Osmond (Osmond), rented a unit in a duplex located at 116 ½ West Main Street, Bainbridge, Ohio that was owned by Respondent. (Tr. 38, 80-81, 110, 256)
9. Complainant lived down the street from Osmond. (Tr. 110-111)
10. Osmond told the Complainant that she was moving. (id.)
11. Complainant told Osmond she wanted to move from where she was because she needed a better place to live. (id.)

12. Osmond told Complainant she would talk to Respondent about Complainant renting the property. (id.)
13. At some point after Osmond vacated the duplex, she lived with Respondent. (Tr. 82)
14. In May 2015 Complainant moved into the unit vacated by Osmond. (Tr. 80, 109)
15. Two to three days after Osmond moved, Respondent went to the duplex to see what she had taken out of the duplex and was unaware of Osmond telling Complainant it was okay for her to move in. (Tr. 81, 204-206)
16. Respondent agreed to Complainant renting the duplex for \$350.00 a month which she paid in cash each month and recorded in a receipt book. (Tr. 83, 111) (Comm. Exh. 19)
17. Respondent did not keep paper records of monthly rent receipts. The only records of monthly rent receipts that he collected were in his head. (Tr. 80)
18. Respondent would visit the property to pick up the rent or have women pick the rent up. (Tr. 112)

19. Shortly after Complainant moved in in the late spring of 2015, the Complainant's son's domestic partner of 19 years, Angela Beatty (Beatty) was taking groceries into Complainant's duplex, while Complainant was already inside. (Tr. 17)
20. Respondent pulled up in his truck and asked Beatty, "Is my wife here?" (id.)
21. Afterward Beatty told Complainant what Bray said. (id.)
22. During the course of Complainant's tenure when Respondent came to the property to pick up rent on several occasions, he referred to Complainant as "my woman" and "my lady." (Tr. 17, 20, 83-85, 101-102, 119-120, 261) (Comm. Exh. 18)
23. At the beginning of her tenancy when Complainant called Respondent about repairs that needed to be made to her unit, Respondent made the repairs. (Tr. 259)
24. However, the repairs often would not last and the leaking pipes began to damage the floors and the cabinets in the kitchen and bathroom. (Tr. 26-27, 130)
25. The sewage backups caused a constant odor in the apartment. (Tr. 32, 130, 260)

26. In November 2017, Complainant was \$90.00 short on her rent, and she told Respondent when he came to pick up the rent. (Tr. 22-24, 121-122)
27. Respondent told her “there are other ways to pay the rent.” (id.)
28. Respondent also told Complainant that if she wanted repairs completed “the same deal” applied and that “one hand washes another.” (id.)
29. While Respondent was making sexual overtures to Complainant, he grabbed Complainant’s buttocks and brushed up against her breast. (Tr. 24)
30. Complainant informed Respondent that she did not like his touching her. (Tr. 156)
31. Complainant felt that Respondent’s proposition was “disgusting.” (id.)
32. During this encounter, Complainant’s daughter, Heather Bender (“Bender”), was in the apartment’s kitchen and overheard the conversation between Complainant and Respondent. (Tr. 227-228)

33. Complainant also informed Beatty about Respondent's comments. (Tr. 22-24)
34. Beatty helped Complainant file an on-line complaint about Respondent's conduct with the Ross County Sheriff's Department. (Tr. 43)
35. Complainant received assistance to pay her rent from Ross County Community Action ("RCCA"). (Tr. 41-42, 85-86, 117-118, 123-124) (Comm. Exh. 3)
36. RCCA paid the \$90.00 shortage in Complainant's November rent and all \$350.00 of the December rent. (id.)
37. The check from RCCA was made payable to the order of Respondent, dated November 21, 2017, endorsed by Respondent, and negotiated to the Rockhold Brown & Co. Bank on November 27, 2017. (Comm. Exh. 3)
38. After November 2017, Complainant called Respondent and left messages about the maintenance that needed to be performed in her unit. (Tr. 131, 157)
39. Respondent did not return Complainant's calls and did not perform any maintenance in her unit. (id.)

40. In December 2017, Complainant took photos of the damage caused by the lack of maintenance. (Tr. 131-140) (Comm. Exh. 1)
41. Complainant also photographed the roach infestation that was a result of the water leaks. (id.)
42. On December 11, 2017, Complainant wrote a letter to Respondent listing the issues in the apartment: “Roach infestation, water leak and water damage, faulty electrical wiring, broken water heater, and inadequate heat.” (Tr. 86-87, 126-130) (Comm. Exh. 4)
43. The letter also listed the multiple times Complainant had contacted Respondent, receiving no response. (id.)
44. Complainant contacted the Bainbridge Fire Department (BFD) on December 12, 2017, asking for an inspection so she could put her rent into escrow. (Tr. 91, 145-146)
45. The Fire Chief wrote a report, signed by him on January 23, 2018, outlining the issues he found, including water leaks, black mold, electrical outlets that needed replaced, and an extreme roach infestation. The report concluded that the living conditions of the property were “sub-standard.” (Comm. Exh. 7)

46. This report was sent to Respondent. (id.)
47. On January 3, 2018, Complainant filed an Application by Tenant to Deposit Rent with the Clerk, allowing her to begin placing her rent into escrow rather than paying it to Respondent. (Tr. 88, 140-142) (Comm. Ext. 5)
48. In January 2018, Complainant contacted the Ross County Health District (RCHD) regarding the sewage backups she had experienced in the bathroom. (Tr. 89-90, 142-145)
49. The RCHD did an inspection and sent a report to Respondent dated February 5, 2018 that found the property to be in violation of Ohio Administrative Code 3701-29.¹ (Comm. Exh. 6)

“(...) I spoke with the tenant Robin Pickell at the time of inspection. She informed me that she was unable to flush toilets so I was not able to dye the system to confirm whether or not it was going to one of the two tanks identified on the property. The two tanks that were located are between the dwelling and manufactured home. The one closest to the manufactured home was a homemade “dry well” and shall not be in use according to OAC 3701-29. If the manufactured home is occupied the sewage treatment will need to be replaced and brought in compliance with OAC 3701-29. The second tank closest to the dwelling was so full that it was not

¹ Chapter 3701-29 Household Sewage Treatment Systems

possible to determine whether or not it was a “dry well”, it does appear however that it is one. This tank will need to be pumped with the Ross County Health District present so it can be observed to determine compliance. (...)”

50. Complainant again placed her rent into escrow in February 2018. (Tr. 147) (Comm. Exh. 8)
51. Complainant wrote a second letter to Respondent, again chronicling the requested repairs and damage that was continuing due to the lack of repairs. (Tr. 92-93) (Comm. Exh. 9)
52. Respondent did not contact Complainant about the letter but did enter her apartment to fix the plumbing for 116 West Bainbridge Ave., the unit adjacent to Complainant’s unit. (Tr. 192)
53. On February 20, 2018, Respondent gave Complainant a Notice to Leave Premises. (Tr. 93, 149) (Comm. Exh. 10)
54. On February 26, 2018, Respondent filed a Complaint in Forcible Entry and Detainer in the Ross County Municipal Court seeking to evict Complainant. (Tr. 268) (Comm. Exh. 10)

55. Respondent wrote the reason for the eviction was “Lost debat (sic) card, every month late on rent.” (Tr. 94, 150) (Comm. Exh. 11)
56. Complainant put her March 2018 rent into escrow. (Tr. 149-150) (Comm. Exh. 12)
57. The Municipal Court ordered a hearing on the Forcible Entry and Detainer on March 20, 2018. (Tr. 151-152) (Comm. Exh. 13)
58. Complainant resolved the eviction complaint by agreeing to move out by April 19, 2018 and leaving all appliances behind. (Tr. 98, 152-153, 269-270) (Comm. Exh. 15)
59. The settlement agreement allowed Complainant to keep escrowed rent. (id.)
60. The settlement amount financially enabled Complainant to find new housing. (id.)
61. Complainant moved out of the property on April 19, 2018 and moved to a rental in Greenfield, Ohio. The monthly rental amount is \$450.00. (Tr. 158)

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.²

1. The Commission alleged in the Complaint that Respondent sexually harassed Complainant by creating a sexually hostile environment, subjecting Complainant to quid pro quo sexual harassment, and refusing to make repairs to her apartment and attempting to evict her in retaliation for Complainant opposing a discriminatory practice.

2. These allegations, if proven, would constitute violations of R.C. 4112.02(H)(4) and (12) which provides that it is an unlawful discriminatory practice for any person to:

² Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

(4) Discriminate against any person in the terms and conditions of (...) renting, (...), because of (...), sex, (...)

(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...

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112.
4. 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. v. Ohio Civil Rights Comm.*, 61 Ohio St. 3d 607, 609-10, 575 N.E.2d 1164, 1167 (1991).
6. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under the federal Fair Housing Act (FHA) of 1968 (Title VIII), as amended. See e.g., *Howard v. City of Beavercreek*, 108 F. Supp. 2d 866; *Hamrick v. Union Tp.*, 81 F. Supp. 2d 876; *Ohio Civ. Right Comm. v. Myers*, 2014-Ohio-144 (2nd Dist., Montgomery Cty.)

Sexual Harassment

7. Hostile environment and quid pro quo sexual harassment are prohibited forms of sex discrimination under R.C. 4112.02(H)(4) and its federal counterpart FHA U.S.C. section 3604(b). *Kingston Mound Manor I v. Keeton*, 2019-Ohio-3260 (4th Dist.) citing *Shellhammer v. Lewallen*, 770 F.2d 167 (6th Cir.1985) (claims of sexually hostile environment and quid pro quo sexual harassment are actionable under the FHA)

Courts that have found harassment to create an actionable form of housing discrimination also have incorporated Title VII doctrines into their analyses. *Shellhammer v. Lewallen*, 770 F.2d 167 (6th Cir. 1985) (unpublished), *Honce v. Vigil*, 1 F.3d 1085, 1088 (8th Cir. 1993), *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996), *Quigley v. Winter*, 598 F.3d 938, 947-948 (8th Cir. 2010) *see also* *Woods v. Foster*, 884 F. Supp. 1169 (N.D. Ill. 1995), *Williams v. Poretzky Management, Inc.*, 955 F. Supp. 490 (D. Md. 1996)

8. The Commission's rules on workplace sexual harassment define sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. O.A.C. 4112-5-05
9. Regulations under the FHA give further guidance by applying Title VII standards to the definitions of quid pro quo and

hostile environment harassment in the context of fair housing as follows:

(1) Quid pro quo harassment. Quid pro quo harassment refers to an unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: (...) rental or availability of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision of services or facilities in connection therewith; (...) An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.

(2) Hostile environment harassment. Hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, sale, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the sale or rental, or the provision or enjoyment of services or facilities in connection therewith, or the availability, terms or conditions of a residential real estate-related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing-related services or facilities, or of the residential real-estate transaction.

(i) Totality of circumstances. Whether hostile environment harassment exists depends upon the totality of the circumstances. (...)

81 Fed. Reg. 63054, 24 CFR Part 10024 C.F.R. Subpart H, § 100.600

Quid Pro Quo Sexual Harassment

10. Quid pro quo harassment occurs where a landlord either conditions any of the terms, conditions, or privileges of tenancy on submission to sexual requests or deprives the tenant of any of those terms, conditions, or privileges because the tenant has refused to accede to the landlord's requests. *DiCenso v. Cisneros, infra, see also Honce v. Vigil*, 1 F.3d 1085, (10th Cir. 1993)

11. The Commission can establish that Respondent subjected Complainant to quid pro quo harassment with credible evidence that: (1) Respondent made an unwelcome request or demand to Complainant to engage in conduct of a sexual nature, (2) Respondent explicitly or implicitly conditioned submission to the request or demand on Complainant receiving maintenance and receiving repair services during her tenancy in the apartment, (3) and the Respondent deprived Complainant of repair services because she did not accede to Respondent's requests. (*id.*)

12. Complainant testified that when Respondent came to collect the rent in November 2017, she told Respondent that she was having difficulty paying the rent that month. (Tr. 121)

13. Respondent then told Complainant that there were other ways that she could pay her rent and get repairs and maintenance done which Respondent described as “sexual”. (Tr. 23, 121-122, 155, 228, 210)
14. At the time that Respondent was communicating his proposition to Complainant, he grabbed her “behind” and brushed his hand across her breast and Complainant immediately rejected his proposition. (Tr. 24, 155-156, 212, 228-229)
15. After Complainant did not accede to Respondent’s request, he would not return Complainant’s telephone calls and letters requesting that he perform needed maintenance on her unit.
16. The Respondent’s failure to perform maintenance and repairs as requested by Complainant caused the living conditions of Complainant’s unit to deteriorate.
17. I found the evidence introduced by the Commission to be credible.
18. Respondent denied asking Complainant to perform any sex acts for him, implying that he did not need to because he has more women wanting him than he can handle.

Q: During the course of your position as a landlord to Ms. Pickell, have you ever asked her to perform any sex acts for you?

A. Absolutely not. I have more girls than I can—they're fighting over me yet.

Q. You're sure you're not exaggerating about that?

A: No. I had three different ones last night—no. I had three different ones last night. (Tr. 267)

19. The Respondent characterizes himself as a “semi-literate octogenarian” who is perceived in his community as a “fat pigeon ready to be plucked” and that the Complainant placed herself in a position to take advantage of him.³

20. However, it is reasonable to infer from the credible evidence in the record that instead of Complainant taking advantage of Respondent, it was Respondent who saw an opportunity in November 2017 to prey on another one of his financially vulnerable female tenants.

21. The Respondent attributed his failure to make needed maintenance repairs on conditions that Complainant created that led to the unit being filthy and unbearable to the point where he was unable to tolerate the smell. (Tr. 268-273)

22. I found the Respondent's testimony to be incredible.

³ Respondent's Post Hearing Brief

23. The findings of the BFD and the RCHD Division of Fire support Complainant's testimony that the conditions in her dwelling were due to Respondent's poor maintenance and upkeep of the property.
24. The ALJ finds that Respondent subjected Complainant to quid pro quo sexual harassment when he requested sexual favors in exchange for the balance of Complainant's November 2017 rent payment and her receipt of maintenance and repair services.

Sexually Hostile Housing Environment

25. The Commission can establish that Respondent subjected Complainant to conduct that created a sexually hostile housing environment with credible evidence that: (1) the Respondent's conduct unwelcomed conduct of a sexual nature, and (2) the conduct was sufficiently severe or pervasive so as to interfere with or deprive Complainant of her right to use or enjoy her home. *Quigley v. Winter*, 598 F.3d 938, 947 (2010).
26. Conduct is sufficiently severe or pervasive if it creates a hostile or abusive environment, both objectively and subjectively. *Salisbury v. Hickman*, 974 F. Supp.2d 1282 (2013) (applying Title VII standards to the FHA citing *Harris v. Forklift Systems*,

Inc., 510 U.S. 17, 21, 114 S.Ct.367, 126 L.Ed.2d 295 (1993);
EEOC v. Prospect Airport Servs., 621 F.3d 991,999 (9th Cir.
2010)

In order to make this determination the factfinder is required to look at and consider “all the circumstances” surrounding the alleged harassment. This may include “the frequency of the [harassing] conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with the “victim’s environment”. *Id.* at 1291 (citation omitted)

Although no one factor is dispositive, as a general matter “the more severe harassment, the less need to show a repetitive series of incidents. *Id.* citing *Brooks v. City of San Mateo*, 229 F.3d 917, 926 (9th Cir, 2000) (citation omitted)

Consistent with this, it is well-established that “isolated and innocuous incidents do not support a finding of sexual harassment.” *Id.* citing *DiCenso, supra*

27. The Respondent asserts that the comments that he made to Complainant was him joking with her and were isolated and innocuous and therefore do not meet the standard of severe and pervasive.
28. The comments of a sexual nature that Respondent made to Complainant prior to November 2017 were isolated and

innocuous. (Tr. 17, 20, 83-85, 101-102, 119-120, 261)
(Comm. Exh. 18)

29. However, the credible evidence in the record regarding unwelcome comments of a sexual nature did not stop with the comments made prior to November 2017.

30. In November 2017 when Respondent subjected Complainant to quid pro quo sexual harassment, he was inside of Complainant's duplex where Respondent verbally propositioned Complainant while simultaneously touching her breast and buttocks.

One act of harassment will meet the severe and pervasive standard if it is egregious. Touching as opposed to the verbal behavior increases the severity of the situation. Direct contact with an intimate body part constitutes one of the most severe forms of sexual harassment. *Worth v. Tyer*, 276 F.3d 249, 268 (7th Cir.2001)

“Undoubtedly, the deliberate and unwanted touching of ***intimate body parts can constitute severe sexual harassment.” *Harvill v. Westward Communs., L.L.C.* 433 F.3d 428, 436 (5th Cir.2005)

31. In December 2017, after Respondent did not return her letters or telephone messages asking that he perform needed maintenance and repairs, she continued to live in the poor conditions in her unit. (Tr. 21-22)

32. When Beatty was taking Complainant for her monthly trip to run errands, Complainant talked about the problems she was having with her apartment and Respondent not responding to her calls and letters. (id.)
33. Beatty told Complainant she needed to talk to Respondent and discuss the issue of repairs with him. (id.)
34. Complainant then told Beatty that she called and left messages, but Respondent wouldn't return her calls and Complainant started crying. (id.)
35. Beatty asked Complainant what's wrong and she told her that in November 2017 Respondent communicated to her that he would take sex in trade for rent and repairs and touched her breast and buttocks. (Tr. 21-22, 24, 53)
36. I found the Commission's evidence credible
37. Looking at all of surrounding circumstances, Respondent's conduct forced the Complainant to live in a dwelling unit that was determined to have "sub-standard" conditions and a household sewage treatment system not in compliance with state law.

38. A reasonable inference can be drawn from the credible evidence in the record that Complainant was humiliated by Respondent's behavior.
39. The ALJ finds that Respondent engaged in hostile environment sexual harassment by subjecting Complainant to physical sexual touching of her private body parts while simultaneously subjecting her to verbal quid pro quo sexual harassment that was severe and had the effect of interfering with Complainant's enjoyment of her housing environment.

**Interference with Housing Rights for Opposing a
Discriminatory Housing Practice**

40. The Commission alleges that that the Respondent violated R.C. 4112.02 (H) (12) by interfering with Complainant's housing rights in retaliation for opposing a discriminatory housing practice.
41. 42 U.S.C. 3617, the federal statutory counterpart to R.C. 4112.02 (H)(12), "reaches all practices which have the effect of interfering with the exercise of rights under the federal fair housing laws." *Michigan Protection and Advocacy Service Inc. v. Babin*, 18 F. 3d 337, 347 (6th Cir. 1994).

“Section 3617 is not limited to those who used some sort of “potent force or duress,” but extends to other actors who are in a position directly to disrupt the exercise or enjoyment of a protected right and exercise their powers with a discriminatory animus.” *id* at 349 citing *Stirgus v. Benoit*, 720 F. Supp. 119 (N.D. Ill. 1989) (racially-motivated fire bombings), *Sofarelli v. Pinellas County*, 931 F.2d 718 (11th Cir. 1991), (sending threatening notes) *United States v. City of Birmingham*, 727 F.2d 560 (6th Cir.) exclusionary zoning, cert. denied, 469 U.S. 821, 105 S.Ct. 95, 83 L. Ed. 2 41 (1984).

“Interfere with” has been broadly applied “to reach all practices which have the effect of interfering with the exercise of rights” under the fair housing laws. *Michigan Protection & Advocacy Serv. v. Babin*, 18 F.3d 337, 347 (6th Cir.1994).

42. The Commission must prove, with the introduction of credible evidence, that Respondent violated R.C. 4112.02(H)(12) by showing that (1) Complainant was engaged in the exercise of her fair housing rights, (2) Respondent interfered with Complainant because she engaged in a protected activity, and (3) Respondent was motivated by a discriminatory intent. *Bloch v. Frischholz*, 587 F.3d 771, 783 (7th Cir.2009); *Campbell v. Robb*, 162 F. Appx. 460, 473-474 (6th Cir.2006).

The temporal relationship between a Complainant’s participation in protected activities and a Respondent’s alleged retaliatory conduct is an important factor in establishing a causal connection. *Nguyen v. City of Cleveland*, 229 F. 3d 559. 563 (6th Cir. 2000).

43. The Commission introduced the following credible evidence that Respondent interfered with the exercise of Complainant's fair housing rights because she engaged in a protected activity.
44. In November 2017, Complainant was short on rent and Respondent communicated to Complainant she could trade rent and maintenance and repairs in exchange for sexual favors while simultaneously touching her private parts, which was unwelcomed and rejected by Complainant. (Tr. 22-24, 121-122)
45. Prior to November 2017 Respondent had performed needed maintenance on Complainant's unit but after November 2017 Respondent would not return Complainant's calls or respond to her letters requesting maintenance. (Tr. 131, 157) (Tr. 86-87, 126-131, 157, 259) (Comm. Exh. 4)
46. On February 26, 2018, approximately three months after Complainant rejected Respondent's proposition for sex in exchange for housing benefits, Respondent filed a Complaint in Forcible Entry and Detainer alleging that Complainant was in violation of her rental agreement because of "Lost Debat (sic) Card Every Month Late on Rent." (Tr. 268) (Comm. Exh. 10)

47. Respondent gave shifting reasons for evicting Complainant: (1) that Complainant was late on rent every month, and (2) Complainant's lack of cleanliness damaged the unit. (Tr. 103-105)
48. The Respondent's articulated reasons for moving to evict Complainant are not credible for the following reasons.
49. Complainant kept receipts to show that she timely paid her rent during her tenancy. (Tr. 170, 200) (Comm Exh. 19)
50. Respondent kept no written receipts and permitted other tenants to live in his rental units who did not timely pay rent or pay rent at all without moving to evict them. (Tr. 73-79) (Tr. 112-114)
51. Respondent's own withholding of maintenance was a cause for the conditions of the unit that Respondent attributes to Complainant. (Tr. 22-23, 127, 129-130, 210-212) (Comm. Exh. 6 & 7)
52. Respondent performed maintenance on the unit adjacent to Complainant's unit while at the same time not performing the maintenance and repairs that Complainant had requested.
53. The ALJ finds that the credible evidence in the record supports the determination that Respondent interfered with

Complainant's housing rights after she opposed a discriminatory housing practice in violation of R.C. 4112.02(H)(12).

54. In conclusion, the ALJ finds that the Respondent engaged in discriminatory conduct in violation of R. C. 4112.02 (H) (4) and (12) and the Complainant is 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 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 Complainant's tenancy at a rental unit in Greenfield, Ohio had a rent increase of \$100.00 more a month than she paid during her tenancy at 116 ½ West Main Street, Bainbridge, Ohio that was owned by Respondent.
6. The Complainant suffered an out of pocket loss of \$2,600.00 (\$100.00 X 26, from April 19, 2018 to June 17, 2020).

INTANGIBLE DAMAGES

7. Complainant testified that she was disgusted by Respondent's proposition and physical touching of her intimate body parts.
8. Complainant told her daughter that she was upset by Respondent's withholding of needed maintenance and repair.
9. Respondent's failure to perform needed maintenance left the Complainant to live in "substandard" housing conditions.
10. Complainant testified that the eviction process made her feel like "I was being evicted for not having sex with him." (Tr. 157)

11. The ALJ recommends that the Complainant be awarded \$30,000.00 in damages for pain, suffering, and humiliation.

CIVIL PENALTIES

12. 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).
13. 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.)
14. Courts have wide discretion in assessing civil penalties. *Memphis Ctr. for Indep. Living v. Richard & Milton Grant Co.*, 2004 WL 6340158 (W.D. Tenn.)
15. The amount of civil penalties assessed depends on a number of factors, including:
 - a) the nature of the violation.
 - b) the degree of culpability.
 - c) any history of prior violations.

d) the financial circumstances of the defendants.

e) the goal of deterrence; and

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

16. Applying the foregoing criteria to this case;

a) Respondent's conduct was an egregious and calculated sexual victimization of Complainant at a time when she was experiencing financial insecurity.

b) Respondent's retaliatory behavior toward Complainant was intentional, blatant, and abhorrent. After many attempts by Complainant to fix the substandard conditions caused by Respondent's withholding of repair and maintenance, Respondent entered Complainant's unit only to perform maintenance and repairs on the adjacent unit.

c) The Commission did not introduce any evidence of prior violations.

d) Respondent owns approximately 20 (twenty) properties. (Tr. 69, 255) (Comm. Exh. 2)

17. 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 379.⁴
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 Ross 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 should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted.

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)

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.

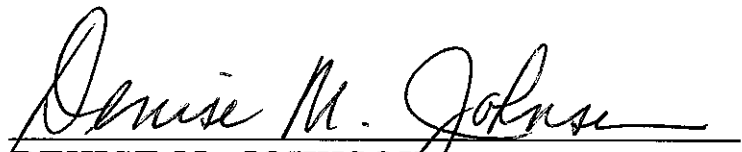
8. Objections to the recommendation of attorney's fees can be filed with the Commission's Compliance Unit after the ALJ makes a Supplemental Recommendation to the Commission regarding Attorney's Fees.

RECOMMENDATIONS

For all the foregoing reasons, it is recommended in Complaint No. 19-HOU-COL-46168 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 Complainant \$32,600.00 in actual damages;
3. The Commission orders Respondent to pay the Commission \$10,000.00 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 his 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 Letters of Certification of Training to the Commission's Compliance Department.


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: January 6, 2021