OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

SABUR JABBAR

Complainant

v.

BRYAN PARKS

Respondent

Complaint No. 08–HOU–AKR–33445
AKR H3 (33445) 05272008
22A–2008–04100F

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

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ALJ'S REPORT BY:

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INTRODUCTION AND PROCEDURAL HISTORY

Sabur Jabbar (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (the Commission) on May 27, 2008.

The Commission investigated and found probable cause that Bryan Parks (Respondent) engaged in unlawful discriminatory practices in violation of Revised Code Section (R.C.) 4112.02(H) (12).

The Commission issued a Complaint, Notice of Hearing, and Notice of Right of Election on February 19, 2009.

The Complaint alleged that Respondent's actions had the purpose and/or effect of creating a racially offensive, intimidating and hostile living environment for Complainant. Specifically, the Complaint alleges that Respondent shouted racial slurs and epithets at Complainant's house on numerous occasions, in addition to threatening Complainant with physical violence.

The Complaint further alleged Respondent's actions had the purpose or effect of attempting to coerce, intimidate, threaten or interfere with Complainant in the exercise or enjoyment of the facilities, services or privileges in connection with the ownership, occupancy, and use of the housing accommodations and rights granted under R.C. 4112.02(H).

The Commission filed a Motion for Default on September 1, 2009.[1]

A public hearing was held on October 27, 2009 at the Ocasek Government Building in Akron, Ohio. Respondent did not appear at the hearing.

The record consists of the previously described pleadings, a transcript consisting of 61 pages, exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on June 21, 2010. Respondent did not file a post-hearing brief.

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[1] The Commission's Motion for Default was granted during a telephone status conference on September 1, 2009.

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 the lack of frankness; and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed sworn charge affidavits with the Commission on May 27, 2008.

2. In a letter dated November 13, 2008 Respondent was notified that it was probable that Respondent engaged in unlawful discriminatory practices in violation of R.C. 4112.02.

3. The Commission attempted, but failed to resolve these matters by informal methods of conciliation.

4. Complainant lived at 45 East Emerling, Apartment B in Akron, Ohio, which is a ground floor apartment.

5. The apartment building has a total of sixteen (16) small efficiency–style apartments which are located on two (2) floors with eight (8) apartments on each floor. The apartment building is U-shaped, creating a small courtyard surrounded on three sides by the apartment building.

6. Each of the ground floor apartments has its own entrance from the street. (Tr. 11-13, 19-20)

7. The landlord, Mr. Bologna, gave Complainant keys to the laundry room and asked him to monitor the room to prevent damage and to make sure it was locked at 8:00 p.m. each night and then unlocked at 8:00 a.m. each morning. (Tr. 24)

8. Respondent moved into one of the apartments at 45 East Emerling three to four months after Complainant moved into his apartment.

9. Respondent's girlfriend, Mary, lived with him. His unit was only a few doors down from Complainant's unit. (Tr. 13-16, 20)

10. Complainant reported Respondent to Mr. Bologna because he observed him damaging the property of a co-tenant.

11. Respondent was aware that Complainant reported him to Mr. Bologna.

12. A few weeks later Respondent became intoxicated. While standing outside of his apartment he started screaming and yelling to the point of disturbing other tenants.

13. Complainant called the police. The police came and told Respondent to go back into his apartment. (Tr. 17-18, 21-23)

14. After the police left, Respondent came out of his apartment and yelled out, "Apartment B ... you fucking nigger ... if you come out I'm gonna kick your ass." (Tr. 17-18, 21-23)

15. Complainant came out of his apartment. Respondent ran at Complainant and attacked him. (Tr. 23-24)

16. Respondent continued to display hostility toward Complainant by not directing racial slurs directly at him, but they

were said loud enough so Complainant heard the racial slurs as he walked by Respondent. (Tr. 26-27, 34)

17. Complainant and Respondent got involved in another altercation. The police were called but declared the situation to be mutual combat and, therefore, took no action. (Tr. 27-28)

18. Complainant and Respondent got into a third altercation related to Respondent's misuse of the laundry room. (Tr. 30-32)

19. Complainant informed the landlord about the harassment but the landlord failed to take any action.

20. Complainant decided to move out of the apartment rather than continue to be exposed to Respondent's harassing behavior.

21. Complainant, who is on public assistance, could only afford to move to a house that is in close proximity, 82 East Emerling,

22. In the early morning hours of March 25, 2006, Respondent walked past 82 East Emerling and shouted, "Jabbar you fucking nigger I kicked your ass three times and I'm going to kick you (sic) ass again and I'm going to kill you if I catch you, you fucking nigger." (Tr. 38-41, Ex. 23)

23. Complainant called the police and filed a report.

24. The police determined that Respondent did commit the actions Complainant accused him of, but they did not rise to the level of criminal conduct. (Tr. 41-45; Ex. 2, 3, 4)

25. Respondent continued shouting names and racial slurs at Complainant while walking past his house during 2006 and 2007. Complainant continued to call the police and file reports. (Tr. 45-49, Ex. 6)

26. Complainant filed a charge with the Commission on July 17, 2007, against Mr. Bologna, Mrs. Bologna, and Respondent.

The charge was conciliated with Mr. Bologna promising to take action against Respondent. (Tr. 49-50, Ex. 7, 8)

27. Mr. Bologna wrote a letter to Respondent demanding he stop harassing Complainant or he would be evicted. Unfortunately, the letter did not stop Respondent's behavior. (Tr. 51-55, Ex. 9)

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]

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

1. The Commission alleges in the Complaint that Respondent intimidated Complainant, and harassed him, and otherwise interfered with the quiet enjoyment of his apartment on the basis of race.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that:

> It shall be an unlawful discriminatory practice:
>
> (H) For any person to:
>
> (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.

3. 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).

4. Federal case law applies to alleged violations of R.C. Chapter 4112. *Little Forest Med. Ctr. of Akron v. Ohio Civil Rights Comm.*, (1991), 61 Ohio St.3d 607. 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.[3] It is also appropriate to refer to the regulations of the Department of Housing and Urban Development (HUD), the federal agency charged with enforcement of Title VIII.

5. Like its federal counterpart, a broad range of activities can constitute a violation of R.C. 4112.02(H)(12). Among other things, this provision prohibits acts that threaten, intimidate, or interfere with persons (and their associates) in their enjoyment of housing accommodations because of their race. *See HUD Regulations*, 24 C.F.R. 100.400(c)(2).

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[3] Section 3617 of Title VIII is substantially the same as R.C. 4112.02(H)(12). *See* 42 U.S.C. 3617.

6. The evidence in this case shows Respondent engaged in a campaign of intimidating and threatening behavior toward Complainant by shouting racial epitaphs toward him and threatening him with physical violence.

7. Respondent threatened Complainant, intimidated him, and otherwise interfered with the quiet enjoyment of his home. Respondent's actions, which were racially motivated, violated R.C. 4112.02(H)(12). Therefore, Complainant is entitled to relief.

DAMAGES

8. 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). The statute also provides that the Commission, in its discretion, may award punitive damages.

ACTUAL DAMAGES

9. In fair housing cases, the purpose of an award of actual damages is to place 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). 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. *Steele v. Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973). Damages for intangible injuries may be established by testimony or inferred from the circumstances.[4] *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

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[4] 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 at ¶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).

10. In this case, the evidence shows that Complainant, who receives public assistance, was forced to move to a place where he had to pay higher rent, in addition to moving expenses:

Moving expenses:

$ 555.00 for repair and use of his sister's van

$ 45.00 to pay for help moving

$ 100.00 security deposit

Higher rent:

Additional $40.00 per month from August 2005 through December 2009, which then increased to $54.00 per month

Total: $3,144.00.

11. Complainant also gave credible testimony regarding the impact of the years of harassment. Complainant testified about the extreme anxiety he suffered from Respondent's actions. He was given a prescription of Valium to help him sleep. However, he continued to wake up at night because of the fear and anxiety he suffered from Respondent's conduct.

12. The ALJ credited Complainant's testimony and sincerity about the emotional distress he suffered from Respondent's actions. In light of Complainant's testimony and the totality of the circumstances surrounding Respondent's actions, the ALJ recommends the Commission award Complainant $10,000.00 for his emotional distress.

PUNITIVE DAMAGES

13. The purpose of an award of punitive damages pursuant to R.C. 4112.05(G) is to deter future illegal conduct. Ohio Administrative Code (O.A.C.) 4112-6-02. Thus, punitive damages are appropriate "as a deterrent measure" even when there is no proof of actual malice. *Shoenfelt v. Ohio Civil Right Comm.*, (1995), 105 Ohio App.3d 379, 385, *citing and quoting, Marr v. Rife*, 503 F.2d 735, 744 (6th Cir. 1974).

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

- The nature of Respondent's conduct;
- Respondent's prior history of discrimination;
- Respondent's size and profitability;
- Respondent's cooperation or lack of cooperation during the investigation of the charge; and
- The effect Respondent's actions had upon Complainant.[5]

O.A.C. 4112-6-01.

15. Applying the foregoing factors to this case:

- Respondent's actions were intentional, malicious, and racially motivated;
- The Commission did not present any evidence that there have been previous findings of unlawful discrimination against Respondent; and
- Respondent is not a provider of housing accommodations. Therefore, the factors relating to size of housing accommodations and profitability are inapplicable in this case.

[5] This factor is more appropriately considered when determining actual damages.

16. Based on the foregoing discussion, the ALJ recommends that Respondent be assessed $10,000.00 in punitive damages.

ATTORNEY'S FEES

17. The Commission's counsel is entitled to attorney's fees. R.C. 4112.05(G)(1); *Shoenfelt, supra* at 386. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.

18. To create a record regarding attorney's fees, the Commission's counsel should file affidavits from plaintiffs' attorneys in Summit 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 Respondent. Respondent 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. Respondent may respond to the Commission's Application for Attorney's fees within 30 days from its receipt.

20. Meanwhile, any Objections to this report should be filed pursuant to the O.A.C. Any objections to the recommendation of attorney's fees can be filed after the ALJ makes her Supplemental Recommendation to the Commission regarding attorney's fees.

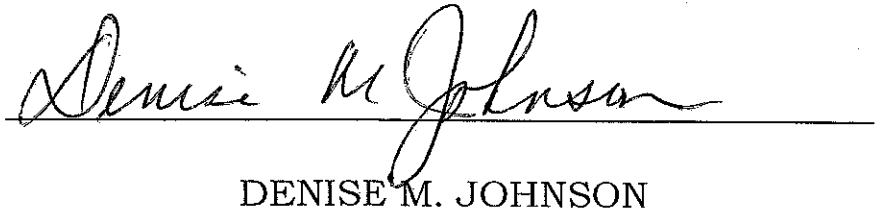
RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 08-HOU-AKR-33445 that:

1. The Commission order Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;

2. The Commission order Respondent within ten (10) days of the Commission's Final Order to pay Complainant actual damages in the amount of $13,144.00; and

3. The Commission order Respondent within ten (10) days of the Commission's Final Order to pay Complainant punitive damages in the amount of $10,000.00.



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

June 13, 2012