

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

DONTIA OWENS

Complainant

and

Complaint No. 9190

(AKR) H3032000 (25607) 031901

05 – 01 – 0743 – 8

CHAD TRENT & JAMES MALONE

Respondent

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

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Complainant

ALJ'S REPORT BY:

Denise M. Johnson
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INTRODUCTION AND PROCEDURAL HISTORY

Dontia Owens (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on March 19, 2001.

The Commission investigated and found probable cause that Chad Trent and James Malone (Respondents) engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H)(4).

The Commission issued a Complaint, Notice of Hearing, and Notice of Right of Election on November 8, 2001. Respondents did not file Answers. The Commission filed a Motion for Default Hearing on March 5, 2003.¹ The public hearing was held on November 24, 2003. The delay in holding the hearing was due to the imprisonment of Respondents and the Commission's identification of valid addresses upon which to serve Respondents after their release from imprisonment.² Respondents did not appear at the hearing.

¹ The Commission's Motion for Default Hearing was granted at the hearing.

² James Malone pled guilty to ethnic intimidation and criminal damaging for which he received a six-months sentence and a fine of \$250.00. Chad Trent pled guilty to escape, ethnic intimidation, and vandalism for which he received a two-year prison sentence. (Comm. Ex. 2 and 3)

The Record consists of the previously described pleadings, a transcript consisting of 33 pages of testimony, exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on February 17, 2004. Respondents did not file post-hearing briefs.

FINDINGS OF FACT

The following findings are based, in part, upon the ALJ's 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 a sworn charge affidavit with the Commission on March 19, 2001.

2. The Commission determined on August 30, 2001 that it was probable that Respondents engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H)(4).

3. The Commission attempted and failed to eliminate the alleged unlawful discriminatory practices by informal methods of conciliation.

4. Complainant is a black person (African-American), who resided with her family at 1173 Rebecca Street, Apt. H, in Wooster, Ohio.

5. On or about March 20, 2000, Complainant discovered that someone had vandalized her property, which included the spray painting of "KKK", swastikas, and "nigger, please" on the doors, in addition to other racially derogatory words on the walls, doors, and other areas of the property, and placed a burned cross in the backyard.

6. Subsequent to the events of March 20, 2000, the Wooster Police Department conducted a criminal investigation that showed or tended to show that Respondents had engaged in the acts of vandalism.

7. As a result of the police investigation and subsequent criminal proceedings, Respondents Chad Trent and James Malone entered into a plea of guilty before the Wayne County Court of Common Pleas and were convicted of ethnic intimidation and vandalism.

8. Respondents intimidated or attempted to intimidate Complainant and her family and threatened and interfered with the exercise or enjoyment of the rights of Complainant and her family in violation of Revised Code 4112.02(H)(12).

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.

1. The Commission alleges in the Complaint that Respondents intimidated and threatened Complainant because she exercised and enjoyed a right granted and protected by division (H) of R.C. 4112.02, the right to be free of discrimination in the renting of a housing accommodation or otherwise make unavailable housing accommodations because of race.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02(H)(12), which provides that it is unlawful to coerce, intimidate,

threaten, or interfere with any person in their enjoyment of a housing opportunity.

3. 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).

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.

5. In *Virginia v. Black*, 155 L. Ed. 2d 535 (2003), the court reviewed the history of the use of the symbol, the swastika and the burnt cross, and the message that is intended to be communicated to the recipient. The court concluded their discussion by stating:

In summary, while a burning cross does not inevitably convey a message of intimidation, often the cross burner intends that the recipients of the message fear for their lives. And when a cross burning is used to intimidate, few if any messages are more powerful.

Id. at 551.

6. The evidence in this case shows that Respondents' actions toward Complainant were motivated by her race.

7. Complainant and her children were the only black family living in the apartment complex.

8. The racist symbols and graffiti, and the burning of the cross on Complainant's lawn were done with the intent and purpose of threatening and intimidating Complainant and her children, thereby interfering with their right to enjoy their housing accommodations.

9. When Complainant was asked how she was affected by the burnt cross and the racially derogatory word "nigger" being painted on her door, she replied:

It affected me a lot. I couldn't work for a while because I was scared to go out because I didn't know who had did it or who theses people were. I didn't want to talk to nobody. I just kept to myself. I sent my kids away from home because I didn't know if they was going to come back and get us or what they was going to do.

(Tr. 12)

10. When asked by Commission's counsel how she felt now that three years had passed since the event, Complainant responded:

I'm still terrified. I'm scared for my children. The worse—because I don't know what these people look like. I still don't know. Like they're out now and I don't know what's going to happen. I'm just really scared.

(Tr. 13)

DAMAGES

11. 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

12. 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. See *Steele v. Title Realty Co.*, 478 F.2d 380 (10th Cir. 1973) (actual damages of \$1,000 awarded to plaintiff consisting of \$13.25 in telephone expenses, \$125.00 in moving and storage expenses, and \$861.75 for emotional distress and humiliation). Damages for intangible injuries may be established by testimony or inferred from the circumstances.³ *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

³ Although emotional injuries are difficult to quantify, "courts have awarded damages for emotional harm without requiring proof of the actual value of the injury." *HUD v. Paradise Gardens*, P-H: Fair Housing-Fair Lending Rptr. ¶25,037, 25,393 (HUD ALJ 1992), citing *Block v. R. H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983) (other citations omitted). The determination of actual damages from such injuries "lies in the sound discretion of the Court and is essentially intuitive." *Lauden v. Loos*, 694 F.Supp. 253, 255 (E.D. Mich. 1988).

13. In this case, the Commission presented evidence that Respondents' discriminatory actions caused Complainant emotional distress. Complainant lost her composure during the hearing when giving testimony about the affects that Respondents' actions had on her and her family.

14. Complainant's testimony about the emotional distress that she suffered from Respondents' discriminatory actions was credible. Complainant's show of emotion at the hearing was sincere. In light of Complainant's testimony and the totality of the circumstances surrounding Respondents' discriminatory actions, the Administrative Law Judge (ALJ) recommends that Complainant be awarded \$7,500 from each Respondent for her emotional distress.

PUNITIVE DAMAGES

15. The purpose of an award of punitive damages pursuant to R.C. 4112.05(G) is to deter future illegal conduct. Ohio Admin. Code 4112-6-02. Thus, punitive damages are appropriate "as a deterrent measure" even when there is no proof of actual malice. *Schoenfelt 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).

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

- The nature of Respondents' conduct;
- Respondents' prior history of discrimination;
- Respondents' cooperation or lack of cooperation during the investigation of the charge; and
- The effect Respondents' actions had upon Complainant.⁴

Ohio Admin. Code 4112-6-01.

17. Applying the foregoing criteria to this case:

- The actions of Respondents were egregious.
- Respondents did not participate in the investigation of the Commission's charge of discrimination. (Comm. Br., Ex. 1, Conciliation Report)
- The Commission did not present any evidence that there have been previous findings of unlawful discrimination against Respondents.

⁴ This criteria is more appropriately considered when determining actual damages.

- Complainant testified about the emotional distress that she suffered as a result of Respondents' conduct. Her testimony was credible.

18. Based on the foregoing discussion, the ALJ recommends that each Respondent be separately assessed punitive damages in the amount of \$10,000.

ATTORNEY'S FEES

19. The Commission is entitled to attorney's fees. R.C. 4112.05(G)(1); *Schoenfelt, 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.

20. To create a record regarding attorney's fees, the Commission's counsel should file affidavits from plaintiffs' attorneys in Cuyahoga 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.

21. If the Commission adopts the ALJ's recommendations and the parties cannot agree on the amount of attorney's fees, the Commission should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted. Respondents may respond to the Commission's Application for Attorney's fees within 30 days from their receipt of the Commission's Application for Attorney's Fees.

22. Meanwhile, any objections to this report should be filed pursuant to the Ohio Administrative Code. Any objections to the recommendation of attorney's fees can be filed 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. 9190 that:

1. The Commission order Respondents to cease and desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code;
2. The Commission order each Respondent to pay Complainant \$7,500 in actual damages (for a combined total of \$15,000); and
3. The Commission order each Respondent to pay Complainant \$10,000 in punitive damages (for a combined total of \$20,000).

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

November 30, 2004