Ohio Civil Rights Commission

Memo

To: Desmon Martin, Chief of Enforcement and Compliance

From: Denise M. Johnson, Chief Administrative Law Judge

Date: October 10, 2008

Re: *Estate of Willie Anthony Harris v. Katalin Dienes*
[CLE] H4090704 [35561] 10062004 05 – 05 – 0089 – 8
Complaint No. 9876

Housing Research & Advocacy Center v. Katalin Dienes
[CLE] H4092204 [35956] 03182005 05 – 05 – 0810 – 8
Complaint No. 9960

CONSIDERATION OF
ADMINISTRATIVE LAW JUDGE'S REPORT

ALJ RECOMMENDS CEASE & DESIST ORDERS

Report issued: October 10, 2008

Report mailed: October 10, 2008

** **Objections due:** **October 27, 2008** **

DMJ:tg

Ohio Civil Rights Commission

Governor
Ted Strickland

Board of Commissioners
Eddie Harrell, Jr.
Leonard J. Hubert
Altagracia Ramos
Rashmi N. Yajnik

G. Michael Payton, Executive Director

October 10, 2008

Shirell Harris
% Estate of Willie Anthony Harris
3283 Washington Boulevard
Cleveland Heights, OH 44118

Jeffrey Dillman, Executive Director
Housing Research & Advocacy Center
3631 Perkins Avenue, 3rd Floor
Cleveland, OH 44114

Katalin Dienes
123 Granada Boulevard
North Port, FL 34287

Re: *Estate of Willie Anthony Harris v. Katalin Dienes*
[CLE] H4090704 [35561] 10062004 05 – 05 – 0089 – 8 Complaint No. 9876

Housing Research & Advocacy Center v. Katalin Dienes
[CLE] H4092204 [35956] 03182005 05 – 05 – 0810 – 8 Complaint No. 9960

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendations (ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty (20) days from the mailing date of this report.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be **received** by the Commission no later than **Monday, October 27, 2008**. *No extensions 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.

Please send the original Statement of Objections to: **Desmon Martin, Chief of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414**. *All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION

Desmon Martin / tg

Desmon Martin
Chief of Enforcement and Compliance

DM:tg

cc: Susan A. Choe, Esq.
Wayne D. Williams, Esq.
Denise M. Johnson, Chief Administrative Law Judge

Enclosure

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

ESTATE OF
WILLIE ANTHONY HARRIS

[CLE] H4090704 [35561] 10062004
05 – 05 – 0089 – 8
Complaint No. 9876

and

HOUSING RESEARCH &
ADVOCACY CENTER

[CLE] H4092204 [35956] 03182005
05 – 05 – 0810 – 8
Complaint No. 9960

Complainants

v.

KATALIN DIENES

Respondent

CHIEF ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT,

CONCLUSIONS OF LAW, AND RECOMMENDATIONS

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% Estate of Willie Anthony Harris
3283 Washington Boulevard
Cleveland Heights, OH 44118

Complainant's Representative

Jeffrey Dillman, Executive Director
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3631 Perkins Avenue, 3rd Floor
Cleveland, OH 44114

Complainant

ALJ'S REPORT BY:

Denise M. Johnson
Chief Administrative Law Judge
Ohio Civil Rights Commission
State Office Tower, 5th Floor
30 East Broad Street
Columbus, OH 43215-3414
614 – 466 – 6684

INTRODUCTION AND PROCEDURAL HISTORY

Willie Anthony Harris (Complainant Harris) and Housing Research Advocacy Center (Complainant HRAC) filed sworn charge affidavits with the Ohio Civil Rights Commission (the Commission) on October 6, 2004 and March 16, 2005, respectively.

The Commission investigated and found probable cause that unlawful discriminatory practices had been engaged in by Katalin Dienes (Respondent) in violation of Revised Code Section (R.C.) 4112.02(H)(1), (4) and (7).

The Commission issued Complaint, Notice of Right of Election and Notice of Hearing No. 9876 on May 26, 2005 and Complaint, Notice of Right of Election and Hearing No. 9960 on November 17, 2005. Subsequent to the issuance of the foregoing complaints, the Commission attempted conciliation. The public hearing was held in abeyance pending conciliation efforts. The matter was scheduled for hearing after conciliation efforts failed.

Complaint No. 9876 alleges that Respondent subjected Complainant Harris to unequal terms and conditions of renting because of his race and familial status. Complaint No. 9960 alleges that Respondent: (1) failed and refused to rent housing accommodations to persons not applied equally alike to all persons without regard to their familial status and race, and (2) that the actions of Respondent thwarted Complainant's goals of providing non-discriminatory housing, and caused it to divert resources to remedy the unlawful discriminatory acts of Respondent.

Respondent did not file answers to the Complaints.

A public hearing was held on November 30, 2006 at the Lausche State Office Building in Cleveland, Ohio. Respondent did not appear at the hearing.

The record consists of the previously described pleadings, a transcript consisting of 14 pages of testimony, exhibits admitted into

evidence at the hearing, and the post-hearing brief filed by the Commission on July 11, 2007.[1]

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.

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[1] Pursuant to Ohio Administrative Code (O.A.C.) 4112-3-06, the Commission made a motion that the hearing proceed as a default hearing because Respondent did not file Answers. The Motion was **granted**.

Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant Harris filed a sworn charge affidavit with the Commission on October 6, 2004. Complainant HRAC filed a sworn charge affidavit with the Commission on March 16, 2005.

2. The Commission determined on April 14, 2005 and October 6, 2005, with regard to Complainant Harris and Complainant HRAC respectively, that it was probable that unlawful discriminatory practices had been engaged in by Respondent in violation of R.C. 4112.02(H)(1), (4) and (7).

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

4. Respondent is a provider of housing accommodations located at 7196 Rustic Oval, Seven Hills, Cuyahoga County, Ohio.

5. Complainant is an African-American who, in 2004, was seeking housing for himself, his wife, and his five (5) children.[2]

6. On September 7, 2004, Complainant Harris attempted to rent housing accommodations from Respondent, who refused to allow Complainant Harris to rent her property – a five-bedroom home.

7. Thereafter, Complainant Harris contacted Carrie Pleasants (Pleasants), the Director of Research and Investigation at Complainant HRAC.

8. Complainant HRAC sent testers to Respondent's property. Respondent made a comment that she did not want to rent to anyone with too many children and specifically said that six (6) to eight (8) was too many.

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[2] Commission Investigator Robert Krosky (Krosky) testified Complainant has five (5) minor children. [Tr. 5]

9. Complainant HRAC assisted Complainant Harris in filing a charge of discrimination with the Commission.

10. Commission Investigator Krosky contacted Respondent by telephone. Respondent told Krosky that she refused to rent to Complainant Harris and his family because her neighbors told her not to rent to black people and Complainant Harris had too many children.

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 Complaint No. 9876 that Respondent subjected Complainant Harris to unequal terms and conditions of renting because of his race and familial status.

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:

(H) For any person to:

(1) Refuse to rent, ... refuse to negotiate ... rental of housing accommodations, because of race, ... familial status, ...

(4) Discriminate against any person in the terms or conditions of ... renting, ... or use of any housing accommodations, ... because of race, ... familial status, ...

(7) ... make or cause to be made any statement or advertisement, relating to the ... rental ... of any housing accommodations, that indicates any preference, limitation, specification, or discrimination based upon race, ... familial status, or an intention to make any such preference, limitation, specification, or discrimination.

3. R.C. 4112.01(A)(15) defines "familial status" as:

> one or more individuals who are under eighteen (18) 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. 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).

5. 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, as amended.[3]

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[3] 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:

6. The same standards of proof that apply to employment discrimination cases generally apply to housing discrimination cases.[4] Normally, these standards require the Commission to first prove a *prima facie* case of housing discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 5 FEP Cases 965 (1973). However, if the Commission presents direct evidence of unlawful discrimination and the fact-finder credits the direct evidence, the *McDonnell Douglas* evidentiary framework does not apply. *Terbovitz v. Fiscal Court of Adair County*, 44 FEP Cases 841, 844 (6th Cir. 1987).

"[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).

[4] Although the Supreme Court has never addressed the issue, "... lower courts have generally assumed that ... precedents from the employment discrimination field should be followed in interpreting Title VIII." R. Schwemm, *Housing Disc.*, 1996 Ed. at 10-2.

7. In this case, there is direct evidence of familial status and race discrimination.[5] Respondent admitted to the Commission Investigator that she refused to rent to Complainant Harris because of his race and because he had "too many children".

8. R.C. Chapter 4112, like its federal counterpart, requires that housing providers evaluate families with children on their individual merits rather than group stereotypes. *See HUD v. Schilling,* P-H: Fair Housing-Fair Lending Rptr. ¶25,052 at 25,484 (HUD ALJ 1993) (while landlords are free to seek quiet tenants, they may not exclude families with children because of "stereotypical beliefs" that children are "*per se* noisy"); *HUD v. Jeffre,* P-H: Fair Housing-Fair Lending Rptr. ¶25,020 at 25,254 (HUD ALJ 1991) (respondent's illegal policy of not renting to families with children was based on her view that children will cause "problems" and "a lot of noise").

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[5] Direct evidence is "evidence which, if believed, proves the fact without inference or presumption." *Brown v. East Mississippi Electric Power Assn.*, 61 FEP Cases 1104, 1106 (5th Cir. 1993).

9. Respondent's conduct in denying housing accommodations to Complainant Harris is illegal conduct in violation of R.C. 4112(1), (4), and (7).

DAMAGES

10. 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

11. The purpose of an award of actual damages in a fair housing case, as in employment discrimination cases,

> ... is to put the plaintiff in the same position, so far as money can do it, as ... [the plaintiff] 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.[6] *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

12. Complainant Harris died in the spring of 2006 after a short-term illness. (Tr. 12) It can be inferred from the circumstances that Complainant Harris suffered stress, indignity, and humiliation from Respondent's conduct in denying him and his family

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[6] Although emotional injuries are difficult to quantify, "courts have awarded damages for emotional harm without requiring proof of the actual value of the injury." *Paradise Gardens, supra*, at 25,393, *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).

housing accommodations based on his race and familial status. The Estate of Complainant Harris is, therefore, awarded $10,000 for pain and suffering.

13. Complainant HRAC provided credible evidence of the resources expended on its investigation of Complainant Harris' complaint of housing discrimination. (Comm. Ex. 2) Complainant HRAC is, therefore, awarded $4,170 for diversion of its resources and for frustration of its mission.

PUNITIVE DAMAGES

14. The purpose of an award of punitive damages, pursuant to R.C. 4112.05(G), is to deter future illegal conduct. O.A.C. 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).

15. The evidence shows that Respondent acted with intent when she subjected Complainant Harris to unequal terms and conditions in denying him housing accommodations based on his race and familial status. The evidence also shows that Respondent acted with intent when HRAC used a tester to apply for the same housing accommodations that Complainant Harris applied for. Punitive damages are appropriate in this case in order to deter Respondent from engaging in future violations of R.C. 4112.02(H).

16. 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.[7]

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

17. Applying the foregoing criteria to this case:

- There is no dispute that Respondent acted with intent to deny Complainant Harris housing accommodations because of his race and familial status. It can also be inferred from the testimony by Commission Investigator Krosky that Respondent's conduct was wanton and a conscious disregard for the law;

- The Commission did not present any evidence that there have been previous findings of unlawful discrimination against Respondent;

- The Commission did not introduce evidence regarding Respondent's financial assets;

- The only evidence introduced at the hearing regarding Respondent's cooperation or lack thereof with the Commission investigation is the testimony provided by Krosky regarding telephone conversations he had with Respondent.

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[7] This criteria is more appropriately considered when determining actual damages.

18. Based on the foregoing discussion, the ALJ recommends that Respondent be assessed punitive damages in the amount of $5,000 per Complainant.

ATTORNEY'S FEES

19. The Commission 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.

20. In order 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 Respondent. Respondent 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 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 her receipt of it.

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 Regarding Attorney's Fees to the Commission.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 9876 and Complaint No. 9960 that:

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

2. The Commission order Respondent, within ten (10) days of receipt of the Commission's Final Order, to pay the Estate of Complainant Harris $10,000 and Complainant HRAC $4,170 in actual damages;

3. The Commission order Respondent, within ten (10) days of the receipt of the Commission's Final Order, to pay the Estate of Complainant Harris $5,000 and Complainant HRAC $5,000 in punitive damages;

4. The Commission order Respondent, within ten (10) days of receipt of the Commission's Final Order, to make arrangements to attend a training course on fair housing law sponsored by Complainant HRAC, at Respondents' expense, said training course to be taken within six (6) months from the date of the Commission's Final Order; and

5. The Commission order Respondent, as a housing provider, to give prospective renters notice of the equal opportunity housing laws in their rental applications with language similar to the language contained in Appendix A.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

October 10, 2008

EQUAL HOUSING OPPORTUNITY

It is illegal to discriminate against any person because of race, color, religion, sex, familial status (having one or more children), ancestry, disability, or national origin. Anyone who feels he or she has been discriminated against should contact:

Ohio Civil Rights Commission
Lausche State Office Building, Suite 885
615 West Superior Avenue
Cleveland, OH 44113

Toll Free: 888 – 278 – 7101

Phone: 216 – 787 – 3150 Fax: 216 – 787 – 4121

IT IS ALSO ILLEGAL TO RETALIATE AGAINST ANYONE
WHO FILES A CHARGE WITH
THE OHIO CIVIL RIGHTS COMMISSION
OR PARTICIPATES IN A COMMISSION INVESTIGATION.

APPENDIX A