



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Elisabeth Curtis
Complainant,

Complaint No. 14-HOU-DAY-24161

v.

Michael Buttram
Respondent.

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

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

Commissioners

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Elisabeth Curtis
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ALJ'S REPORT

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April 28, 2016

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**Re: Elisabeth Curtis v. Michael Buttram
Complaint No. 14-HOU-DAY-24161**

Attached 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 Administrative Code §4112-1-02, your Statement of Objections must be **received** by the Commission no later than May 23, 2016. *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.

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, OH 43215-3414. All parties and the Administrative Law Judge should receive copies of your Statement of Objections.

FOR THE COMMISSION:

Desmon Martin /eks
Desmon Martin
Director of Enforcement and Compliance

Attachments

cc: Lori A. Anthony, Section Chief – Civil Rights Section / Kari Stilwell, Administrative Secretary / G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel / Stephanie Bostos-Demers, Chief Legal Counsel



INTRODUCTION AND PROCEDURAL HISTORY

Elisabeth Curtis (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on February 13, 2014.

The Commission investigated and found probable cause to believe that Michael Buttram (Respondent) engaged in unlawful discriminatory housing practices in violation of Revised Code Section (R.C.) 4112.02(H)(1), (4), (7), and (12).

The Commission attempted to resolve the charge through informal methods of conciliation. After conciliation efforts failed, the Commission issued a Complaint, Notice of Hearing, and Notice of Right of Election on October 23, 2014.

The Commission alleged that Respondent harassed, posted a note on Complainant's door that contained a racial epithet, and constructively evicted Complainant because Complainant did not submit to Respondent's request for sexual favors. The Commission also alleged that Respondent harassed and attempted to evict

complaint because she opposed what she believed was a discriminatory practice.

Respondent filed an Answer on November 17, 2014, denying that he had engaged in any unlawful discriminatory practices.

A public hearing was held on September 29, 2015, at the Allen County Justice Center, 33 North Main Street, Lima, Ohio.

The record consists of the previously described pleadings; a transcript consisting of 108 pages of testimony; exhibits admitted into evidence at the hearing, and a post-hearing brief filed by the Commission on November 16, 2015. Respondent did not file a post hearing brief.¹

¹ Respondent represented himself pro se.

FINDINGS OF FACT

The following findings of fact 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 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 charge with the Commission on February 13, 2014.
2. The Commission determined on September 25, 2014, that it was probable that Respondent engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H)(1), (4), (7), and (12).
3. The Commission attempted to resolve this matter by informal methods of conciliation.

4. The Commission issued the complaint after conciliation failed.
5. Respondent owned property located at 203 North Washington Street in Lima, Ohio. (Tr. 14, 93)
6. Complainant is African-American. (Tr. 13)
7. Complainant has three children ages 18, 15, and 14. (Tr. 22)
8. Complainant met Respondent in 2006 and they started dating the same year. (Tr. 13-14)
9. Complainant and Respondent continued their dating relationship until 2011. (Tr. 14)
10. Complainant was evicted from her apartment and needed a place to stay. (Tr. 99)
11. Complainant then moved into a property owned by Respondent in November 2012. (Tr. 14-15)
12. Complainant had a verbal agreement to pay Respondent \$425 a month for the property. (Tr. 16)
13. The \$425 a month was half of the regular rent of \$750. (Tr. 99)

14. The water bill was included in the rent amount and Complainant paid the remaining utilities. (Tr. 18)
15. Respondent allowed Complainant to live in the apartment six months rent-free on the condition that Complainant fixed up the apartment. (Tr. 99)
16. The property Complainant rented was attached to property occupied by Respondent and another tenant, Craig McDonald (McDonald). (Tr. 15-16)
17. Complainant knew McDonald long before she moved into the apartment. (Tr. 16)
18. Complainant had the apartment on one end of the building; McDonald rented the one in the middle; and Respondent resided in the apartment on the other end of the building. (Tr. 61)
19. In February 2013, Complainant paid her rent in a lump sum. (Tr. 17)
20. In the spring of 2013, Complainant began a romantic relationship with McDonald. (Tr. 23-24)

21. After Complainant and McDonald started the romantic relationship, Respondent sent around 20 to 25 texts a day to Complainant. (Tr. 19, Comm. Exh. 2)
22. Complainant believed the texts to be threatening. (Tr. 19)
23. Respondent turned off the water to the building when he left for work at 6:00 AM and didn't turn it back on until he returned home between 8:00 PM and 11:00 PM. (Tr. 21)
24. Complainant and McDonald had to purchase water from a nearby store to cook with and to flush the toilets. (Tr. 21)
25. Complainant's three children left the apartment in July 2013 and moved in with Complainant's parents. (Tr. 21, 38, and 81)
26. On July 3, 2013, Complainant filed her first charge of discrimination with the Commission based on her belief that Respondent was attempting to evict her because she refused to have a relationship with him. (Tr. 25-26, Comm. Exh. 1)
27. Respondent continued texting and calling Complainant after she filed her charge, including sending pictures of his middle finger. (Tr. 27, Comm. Exh. 12)

28. On August 30, 2013, Complainant and Respondent got into a physical fight and Respondent called the police. (Tr. 28, Comm. Exh. 4)
29. Complainant was listed as the victim on the police report. (Comm. Exh. 4)
30. On September 1, 2013, Respondent left an eviction notice on Complainant's door for assaulting the landlord and the refusal of entry for the purpose of repairs. (Tr. 30, Comm. Exh. 5)
31. On September 16, 2013, Respondent left another eviction notice on Complainant's door for non-payment of rent. (Comm. Exh. 6)
32. On September 26, 2013, the property manager left a Notice of Inspection for Complainant to be carried out the next day. (Tr. 32, Comm. Exh. 10)
33. Respondent's stepson became the property manager after Complainant filed her charge with the Commission. (Tr. 31)
34. On September 27, 2013, Complainant's property was inspected and Respondent attached a handwritten note to Complainant's door with following message:

“I didn’t have roaches until you two people came into my life. This is all your fault. More money I have to spend to clear this shit up. Never rent to Niggers again.”

(Tr. 32, 96-97, Comm. Exh. 8)

35. A dead roach was taped to the note. (Tr. 97, Comm. Exh. 8)

36. Complainant stopped living in the apartment once McDonald was evicted. (Tr. 33, 66)

37. Respondent filed a Forcible Entry and Detainer for non-payment of rent against Complainant in the Lima Municipal Court. (Comm. Exh. 7)

38. The action was dismissed on October 16, 2013. (Comm. Exh. 7)

39. Complainant moved her possessions out of 203 North Washington Street on November 5, 2013. (Tr. 18)

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 that Respondents refused to rent to Complainant, adversely affecting the terms or conditions of Complainant's housing; posted a statement on Complainant's apartment that is discriminatory based on race; and coerced, intimidated, and threatened Complainant because she filed a charge of discrimination.
2. These allegations, if proven, would constitute violations of R.C. 4112.02(H)(1), (4), (7), and (12) which provides in pertinent part that it is an unlawful discriminatory housing practice for any person to:
 - (1) Refuse to rent housing accommodations (...) or otherwise deny housing accommodations because of (...) sex;

(4) Discriminate against in person in the terms or conditions of renting because of sex;

(7) Print, publish, or circulate any statement related to the rental of any housing accommodations that indicates any limitation or discrimination based on race or an intention to make such limitation or discrimination; and

(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 any right granted or protected by division (H) of R.C. 4112.02.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove violations of R.C. 4112.02(H) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(E) and (G).
4. The Commission may prove a violation of R.C. 4112.02(H)(1) and (4) "because of sex" by proving either of two types of sexual harassment: "quid pro quo" or "hostile environment harassment." *Hampel v. Food Ingredients Specialties, Inc.*, 89 Ohio St.3d 169, 177 (2000).

(1) "[Q]uid pro quo" harassment, i.e., harassment that is directly linked to the grant or denial of a tangible economic benefit, or (2) "hostile environment" harassment, i.e., harassment that while not affecting economic benefits, has the

purpose or effect of creating a hostile or abusive (housing) environment.

Id. at 176.

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 (1991).
6. 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).
7. Normally the Commission has to establish a prima facie case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
8. The establishment of a prima facie case creates a rebuttable presumption of unlawful discrimination. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981).
9. Once the Commission establishes a prima facie case, the burden of production shifts to Respondent to “articulate

some legitimate, nondiscriminatory reason” for the [adverse housing action].² *McDonnell Douglas*, 411 U.S. at 802, *St. Mary’s Honor Center v. Hicks*, 509 U.S. 502, 507 (1993), quoting *Burdine*, 450 U.S. at 254-55.

² Although the burden of production shifts to Respondent at this point, the Commission retains the burden of persuasion throughout the proceeding. *Burdine*, 450 U.S. at 254.

The defendant’s burden is merely to articulate through some proof a facially nondiscriminatory reason for the [adverse housing action]; the defendant does not at this stage of the proceedings need to litigate the merits of the reasoning, nor does it need to prove that the reason relied upon was bona fide, nor does it need to prove that the reason was applied in a nondiscriminatory fashion.

EEOC v. Flasher Co., 986 F.2d 1312, 1316 (10th Cir. 1992) (citations and footnote omitted).

Quid Pro Quo Sexual Harassment

10. Quid pro quo harassment occurs when housing benefits are explicitly or implicitly conditioned upon sexual favors. *U.S. v. Hurt*, 676 F.3d 649, 654 (8th Cir. 2012) (citations omitted).

The gravamen of a quid pro claim is that a tangible [housing] benefit or privilege is conditioned upon [a tenant's] submission to sexual blackmail and that adverse consequences follow from the [tenant's] refusal.

Carrero v. New York City Housing Authority, 890 F.2d 569, 579 (2d Cir. 1989).

11. The Commission may prove a case of quid pro quo sexual harassment with the introduction of credible evidence that:

- (1) Complainant belongs to a protected class;
- (2) Complainant was subjected to an unwelcome demand or request for sexual favors;
- (3) Complainant's reaction to the unwelcome demand or request affected tangible aspects of the terms, conditions, or privileges of housing.

Schmitz v. Bob Evans Farms, Inc., 120 Ohio App.3d 264, 269 (1997), 697 N.E.2d 1037 citing *Kauffman v. Allied Signal Inc., Autolite Div.*, 970 F.2d 178, 185-186 (1992).

12. It is undisputed that Complainant is female.
13. Respondent conditioned Complainant's tenancy in part on Complainant's submission to having a continuing romantic relationship with Respondent. (Tr. 19)
14. When Respondent found out that Complainant and McDonald were engaged in a romantic relationship, he sent Complainant harassing texts, posted eviction notices, and cut off Complainant's water. (Tr. 100-101)
15. Respondent sent many texts to Complainant with the message that if Complainant didn't come over to Respondent's house, she and her children wouldn't have any place to live. (Tr. 19)
16. The credible evidence introduced by the Commission supports the determination that Respondent explicitly conditioned Complainant's continuation of housing benefits upon her submission to sexual favors.
17. The Commission has established a prima facie case of quid pro quo sexual harassment.
18. The presumption of discrimination created by the establishment of the prima facie case "drops out of the picture" when the [housing provider] articulates a legitimate,

nondiscriminatory reason for the adverse [housing action].
Hicks, 509 U.S. at 511.

19. To meet this burden of production, Respondent must “clearly set forth, through the introduction of admissible evidence, reasons for its actions which, *if believed by the trier of fact*, would support a finding that unlawful discrimination was not the cause of the [adverse housing action].” *Id.* at 507.
20. The Commission has the burden to prove that Respondent’s articulated reason is not the true reason but a pretext for illegal housing discrimination. *Secretary, U.S. Dept. of Housing and Urban Development on Behalf of Herron v. Blackwell*, 908 F.2d 864, 870 (1990).
21. Respondent’s reason for attempting to terminate Complainant’s tenancy was that she failed to pay all the rent that she owed. (Tr. 100)
22. Complainant and Respondent bartered for the first six months’ rent and Complainant paid Respondent the remaining six months. (Tr. 74, 99-100)
23. Complainant testified that she paid her rent in a lump sum in February 2013. (Tr. 17)
24. I find Complainant’s testimony credible.

25. The credible evidence supports the determination that Respondent started sending Complainant harassing texts, cutting off her water, and seeking to evict Complainant based on Respondent's implicit expectation that Complainant continue to have a romantic relationship with him or lose the benefits of her housing:

Buttram: "I was at home one day and sitting on my porch and her and - I apologize. You get emotional. Mr. McDonald and her were having sex, and I heard it. She was at that time supposed to have been my girlfriend. It's not the point that they was doing it. It's the point that if you're going to do something like that, you take it to a hotel. You don't let me give you free rent and then do that on the property that I'm providing for you. You take it someplace else.

I know you've heard the saying you don't shit where you eat. You don't do that. That's what got the whole thing started."

(Tr. 99-100)

26. Respondent and Complainant were not in a romantic relationship when Complainant moved into the unit but Respondent still considered Complainant to be his "girlfriend." (Tr. 99)

27. After Respondent became aware of Complainant and McDonald's romantic relationship in July of 2013, he became

angry and started sending texts to Complainant. (Tr. 100-101)

28. From June 2013 to September 2013, Respondent texted Complainant approximately 430 times. (Tr. 19, Comm. Exh. 2)
29. From June 2013 to September 2013, Respondent cut off Complainant's water in the morning when Complainant's children needed to get ready to go to school. (Tr. 21, Comm. Exh. 3)
30. Respondent cut the water off when he left to go to work at 6:00 AM and cut the water back on when he returned home in the evening, sometimes as late as 11:00 PM. (Tr. 21)
31. Respondent also harassed and eventually evicted McDonald. (Tr. 59-68)
32. The credible evidence in the record supports a determination that Respondent engaged in illegal quid pro quo sexual harassment toward Complainant because of her sex in violation of R.C. 4112.02(H)(1) and (4).

**Coerce, Intimidate, Threaten, or Interference with Any Person
Having Exercised or Enjoyed Any Right Granted or Protected by
Division (H) of R.C. 4112.02**

33. Under the FFHA, acts of intimidation, threats, and coercion can be more subtle than fire bombing, acts of physical violence, or burning crosses:

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.

Michigan Protection & Advocacy Serv. v. Babin, 18 F.3d 337, 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. 2d 41 (1984).

34. The Commission may establish a prima facie case under R.C. 4112.02(H)(12) with the introduction of evidence that:

- (1) Complainant engaged in a protected activity;
- (2) Respondent was aware that Complainant had engaged in that activity;

(3) Respondent took an adverse action against Complainant; and

(4) There is a causal connection between the protected activity and adverse action.

Greer-Burger v. Temesi, 116 Ohio St.3d 324, 327, citing *Canitia v. Yellow Freight Sys., Inc.*, 903 F.2d 1064, 1066 (1990).

35. Complainant filed a charge of housing discrimination with the Commission on July 3, 2013. (Comm. Exh. 1)

36. Respondent was aware Complainant filed the charge with the Commission. (Tr. 95)

37. From June 2013 to September 2013, Respondent texted Complainant approximately 430 times. (Tr. 19, Comm. Exh. 2)

38. Complainant got text messages with a photo of Respondent's middle finger almost every morning for about two months. (Tr. 27-28, Comm. Exh. 12)

39. From June 2013 to September 2013, Respondent cut off Complainant's water in the morning when Complainant's children needed to get ready for school. (Tr. 21, Comm. Exh. 3)

40. Complainant called the police several times because Respondent was threatening her. (Tr. 29)
41. On August 30, 2013, Respondent came to Complainant's unit and attacked Complainant on the porch and called the police on her. (Tr. 28-29, Comm. Exh. 4)
42. Twice in September 2013, Respondent placed a Notice to Leave Premises on Complainant's door. (Tr. 30-31, Comm. Exh. 5-6)
43. On September 26, 2013, Complainant received notice that the property manager, Respondent's stepson, would inspect her apartment the next day. (Tr. 32, Comm. Exh. 10)
44. On September 27, 2013, Respondent posted a note on Complainant's door which contained a racial epithet and a dead roach taped to the note. (Tr. 32, Comm. Exh. 8)
45. Respondent admitted that he was frustrated and pissed off because Complainant filed a charge of discrimination. (Tr. 95)
46. After McDonald was evicted, Complainant no longer felt safe in her apartment and moved out. (Tr. 33, 66)

Courts generally apply an objective test in determining when an [tenant] was constructively [evicted] *viz.*, whether the [housing providers] actions made the [benefits and enjoyment of the premises] so intolerable that a reasonable person under the same circumstances would have felt compelled to [leave the premises].

Mauzy v. Kelly Services, Inc., 75 Ohio St.3d. 578, 588-589 (1996) (citations omitted). See also *Halprin v. Prairie Single Family Homes of Dearborn Park Association*, 388 F.3d 327 (2004) (FHA has been held to forbid harassment amounting to “constructive discharge,” a form of discrimination recognized in Title VII cases, citing *DiCenso v. Cisneros*, 96 F.3d 1004, 1008 (7th Cir. 1996); *Neudecker v. Boisclair Corp.*, 351 F.3d 361, 364-65 (8th Cir. 2003) (per curiam); *Honce v. Vigil*, 1 F.3d 1085, 1090 (10th Cir. 1993)).

47. Complainant sent her children to live with her parents and Complainant moved in with her grandparents. (Tr. 33-34)
48. I find that the credible testimony by Complainant establishes that the living conditions became intolerable and that Complainant had no other choice but to leave the apartment.
49. The credible evidence in the record supports a determination that Respondent’s conduct violated R.C. 4112.02(H)(12) and constructively evicted Complainant because Complainant filed a charge of housing discrimination.

Publish Statement In Violation of R.C. 4112.02(H)(7)

50. In order to prove a violation of R.C. 4112.02(H) the Commission must prove that:

- (1) Respondent made a statement;
- (2) The statement was made with respect to the sale or rental of a dwelling; and
- (3) The statement indicated a preference, or limitation or discrimination on the basis of protected class.

White v. United States Dept. of Housing & Urban Development, 475 F.3d 898, 904 (7th Cir. 2007).

51. The Commission needs only to show discriminatory effect, and need not show that the decision complained of was made with discriminatory intent. *Soules v. United States Dept. of Housing & Urban Development*, 967 F.2d 817, 822 (2d Cir. 1992).

52. It is undisputed that Respondent posted a note on Complainant's apartment door that contained a racial epithet related to Complainant's tenancy in the apartment. (Comm. Exh. 8)

53. It is a per se violation where a statement expresses a facially discriminatory and illegal limitation or preference based on race. *Miami Valley Fair Housing Center, Inc. v. Connor Group*, 805 F. Supp. 2d 396, 408 (S.D. Ohio 2011) (citations omitted).
54. The note posted by Respondent on Complainant's apartment door is facially discriminatory because it states an illegal preference or limitation that it is undesirable to rent to African Americans.

Perhaps no single act can more quickly alter the conditions of [housing] . . . than the use of an unambiguously racial epithet such as 'nigger' by a [housing provider communicated to an African American tenant].

Rivera v. Rochester Genesee Regional Transp. Authority, 743 F.3d 11, 24 (2012) (citations omitted).

55. The credible evidence in the record supports the determination that Respondent's conduct is in violation of R.C. 4112.02(H)(7) because of Complainant's race.

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 award punitive damages. R.C. 4112.05(G)(1).

Actual Damages

3. 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).
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. *Steele v. Title Realty Co.*, 478 F.2d 380, 384 (10th Cir. 1973).
5. 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).
6. In this case, the Commission presented evidence that Respondent's discriminatory actions caused Complainant economic loss.

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 at ¶25,393 (HUD ALJ 1992), citing *Block v. R. H. Macy & Co., Inc.*, 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).

7. From February to November 5, 2013, when she moved out, Complainant was denied access to water. (Tr. 18, 35-38)
8. Complainant's children moved in with her parents in July of 2013. (Tr. 38)
9. For having to purchase water for that period of time the ALJ recommends that Complainant be awarded \$200.00 per month for six months and \$100.00 a month for three months for a total of \$1,500.00.
10. Complainant testified that she had to spend the night at a motel six times in order to get away from the harassing behavior of Respondent. (Tr. 23)
11. The ALJ recommends that Complainant be awarded \$45.00 for six nights for a total of \$270.00. (Tr. 23)
12. Complainant paid about \$76.00 a month for the water bill while living with her grandparents. (Tr. 35)
13. Complainant also had to put her furniture in storage and she paid her father \$100.00 a month. (Tr. 35)
14. Complainant did not produce receipts for either expense.
15. The ALJ recommends that Complainant be awarded \$1,500.00 for storage and water bill costs.

16. The Commission presented evidence that Respondent's discriminatory actions caused Complainant emotional distress. (Tr. 33, 66)
17. The ALJ recommends that Complainant be awarded \$2,000.00 for the emotional distress caused to Complainant.
18. The ALJ recommends that Complainant be awarded a total of \$5,270.00 in actual damages.

Punitive Damages

19. 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.

20. Thus, punitive damages are appropriate "as a deterrent measure" even when there is no proof of actual malice. *Shoenfelt v. Ohio Civil Right Comm.*, 105 Ohio App.3d 379, 385 (1995), *citing and quoting Marr v. Rife*, 503 F.2d 735, 744 (6th Cir. 1974).

21. The amount of punitive damages depends on a number of factors, including:
 - (1) The nature of Respondents' conduct;
 - (2) Respondents' prior history of discrimination;
 - (3) Respondents' size and profitability;
 - (4) Respondents' cooperation or lack of cooperation during the investigation of the charge; and
 - (5) The effect Respondents' actions had upon Complainant.⁴

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

22. Applying the foregoing factors to the instant case:

- (1) Respondent's conduct was severe, pervasive, and egregious. Respondent sent threatening texts, deprived Complainant and her family of water, provoked physical altercations, posted eviction notices, posted a note containing a racial epithet, and in general made it impossible for Complainant and her family to enjoy their apartment. (Tr. 19, 21, 28, 30-33)
- (2) The Commission did not introduce any evidence of Respondent having a prior history of complaints of housing discrimination.
- (3) In 2013, Respondent owned a parcel of land at 602 West High Street, Lima, Ohio, which contained the address where Complainant's apartment was located, 203 North Washington Street. The parcel contained three apartments and one house. (Tr. 92-94)
- (4) The Commission did not introduce any evidence of lack of co-operation by Respondent during the investigation.
- (5) Complainant was upset because her children had to go live with her mother and father and she didn't want

to be separated from them. Complainant was living with her grandparents. Complainant's grandfather was ill and she was trying to assist in his care in addition to dealing with the harassing behavior of Respondent. She did not feel safe in the apartment after McDonald was evicted. (Tr. 32-35)

23. Since Complainant refused Respondent's sexual advances, Complainant suffered the adverse consequences that flowed from her refusal. *Carrero*, 890 F.2d at 579.
24. Respondent's conduct was relentless; Complainant testified that Respondent was still sending her texts up to and including the day of the hearing. (Tr. 27)
25. The ALJ recommends that Complainant be awarded \$4,000.00 in punitive damages.

ATTORNEY'S FEES

The Commission's counsel is entitled to attorney's fees. R.C. 4112.05(G)(1); *Shoenfelt*, 105 Ohio App.3d at 386. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.

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

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 his receipt of it.

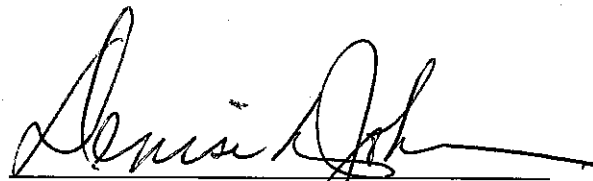
Meanwhile, any objections to this report should be filed pursuant to O.A.C. 4112-1-02. Any objections to the Recommendation of Attorney's Fees can be filed after the ALJ

makes her Supplemental Recommendation to the Commission regarding attorney's fees.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 14-HOU-DAY-24161 that:

1. The Commission orders Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;
2. The Commission orders Respondent to pay Complainant actual damages in the amount of \$5,270.00; and
3. The Commission orders Respondent to pay Complainant punitive damages in the amount of \$4,000.00.



DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW
JUDGE

Date Mailed: April 28, 2016