



# OHIO CIVIL RIGHTS COMMISSION

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Governor John R. Kasich

Commissioners: Leonard J. Hubert, Chair | Lori Barreras | Juan Cespedes | William Patmon, III | Madhu Singh  
Executive Director G. Michael Payton

October 25, 2017

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Ben West  
400 Delaware Avenue  
Apartment 1001  
Marion, Ohio 43302  
*Complainant*

**Re: *Rosa West v. Charles Elliott***  
**Complaint No. 16-HOU-COL-41909**

A copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) (ALJ's Report) is enclosed. In accordance with Ohio Administrative Code § 4112-3-09, any person or aggrieved party may file and serve a written statement of objections to the ALJ's Report within twenty-three (23) calendar days from this mailing. No extension of time will be granted and untimely objections will not be considered.

Mail the original Statement of Objections to: **Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, 30 East Broad Street, 5<sup>th</sup> Floor, Columbus, OH 43215-3414**. Please serve all parties and the Administrative Law Judge copies of your Statement of Objections.

Responses to the objections must be filed with the Compliance Department within fourteen (14) calendar days [seventeen (17) if served by mail] from the date the objections were served.

All requests for oral arguments must be noted on the submission.

FOR THE COMMISSION:

*Desmon Martin /eks*

Desmon Martin  
Director of Enforcement and Compliance

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



IN THE MATTER OF:

**Rosa West**  
Complainant,

**Complaint No. 16-HOU-COL-41909**

v.

**Charles Elliott**  
Respondent.

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

**MIKE DeWINE**  
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**ALJ'S REPORT**

Denise M. Johnson  
Ohio Civil Rights Commission  
Hearing Division  
30 East Broad Street, 5<sup>th</sup> Floor  
Columbus, OH 43215  
(614) 466-6684  
**Chief Administrative Law Judge**

## **INTRODUCTION AND PROCEDURAL HISTORY**

Rosa West (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on August 3, 2015.

The Commission investigated and found probable cause that unlawful discriminatory practices had been engaged in by Charles Elliott (Respondent) in violation of Revised Code Section (R.C.) 4112.02(H).

The Commission issued a Complaint, Notice of Right of Election, and Notice of Hearing on June 30, 2016.

The Complaint alleges that Respondent failed and refused to give Complainant permission to make reasonable modifications to the front and rear entrance of Respondent's property, and has denied Complainant the full use and enjoyment of the housing accommodations, for reasons not applied equally to all without regard to their disability status.

The Commission filed a Motion to Substitute A Party And Suggestion of Death on November 9, 2015. The Administrative Law Judge (ALJ) granted the Commission's motion and Ben West (West), the surviving spouse of Complainant, was substituted as a party.

On February 28, 2017, the Commission filed a Motion for Default Judgement based on Respondent's failure to answer.<sup>1</sup> The ALJ granted the Commission's motion in an order dated March 16, 2017. Accordingly, the allegations in the Commission's complaint were deemed admitted and true based on Respondent's failure to answer or otherwise defend the Complaint.

A public hearing was held on April 20, 2017 at the Community Services Building at 619 West Marion Road, Mount Gilead, Ohio. The record consists of the previously described pleadings and a transcript consisting of 16 pages of testimony.

On June 14, 2017, the Commission filed a Motion to Recommend Dismissal in lieu of a post-hearing brief. For the reasons set forth herein, the ALJ recommends that the Commission dismiss the instant complaint based on the failure of the Commission to establish a *prima facie* case of housing disability discrimination.

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<sup>1</sup> O.A.C. 4112-3-06(F). Failure to answer. A respondent who has not filed an answer as provided in paragraphs (A) to (E) of this rule shall be deemed in default and the allegations of the complaint shall be deemed admitted. (...)

### **Factual Allegations From Commission's Complaint**

1. Complainant was a 76 year old woman who suffered from severe arthritis and Chronic Obstructive Pulmonary Disease (COPD).
2. Complainant and West rented a property located at 236 Lincoln Avenue in Mount Gilead, Ohio, that is owned by Respondent.
3. Complainant was a disabled tenant pursuant to R.C. 4112.01(A)(13) and (21).
4. Throughout Complainant's tenancy she told Respondent that she needed a wheelchair ramp, most recently in June 2015.
5. Respondent had always failed to respond to Complainant's inquiries in violation of R.C. 4112.02(H).
6. In a letter dated December 17, 2015, Respondent was invited to conciliate.
7. Respondent did not sign the conciliation agreement or make a counteroffer acceptable to the Commission.

## **CONCLUSIONS OF LAW AND DISCUSSION**

1. The Commission alleged that Respondent failed and refused to permit Complainant to make reasonable modifications to the steps in the front and back of the property, and denied Complainant the full use and enjoyment of the housing accommodations, for reasons not applied equally to all without regard to their disability status.
2. The allegations, if proven, would constitute a violation of R.C. 4112.02(H)(18)(a) which provides, in pertinent part, that it shall be an unlawful discriminatory practice:

For any person to . . . [r]efuse to permit, at the expense of a person with a disability, reasonable modifications of existing housing accommodations that are occupied or to be occupied by the person with a disability, if the modifications may be necessary to afford the person with a disability full enjoyment of the housing accommodations.

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(E) and (G).

4. Federal case law applies to alleged violations of R.C. Chapter 4112. *Little Forest Medical Ctr. of Akron v. Ohio Civil Rights Comm.*, (1991), 61 Ohio St.3d 607, 609-610.
5. 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.
6. These standards require the Commission to first prove a *prima facie* case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).
7. The burden of establishing a *prima facie* case is not an onerous one. *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

The *prima facie* case serves an important function in the litigation: it eliminates the most common nondiscriminatory reasons for the [adverse action]. . . . [T]he *prima facie* case "raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." *Id.* at 254, citing *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 577 (1978), see *Teamsters v. United States*, 431 U.S. 324, 358, and n. 44 (1977).

8. In this case, the Commission may establish a *prima facie* case of housing discrimination based on the individual's disability by proving that:

- (1) Complainant is disabled;
- (2) Respondent knew or should reasonably be expected to know of the disability;
- (3) Accommodation of the disability may be necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling;
- (4) The accommodation is reasonable; and
- (5) Respondent refused to make the requested accommodation.

*Dubois v. Association of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006).

9. The testimony in the record does not support a determination that Respondent's conduct was prohibited by R.C. 4112.02(H)(18)(a).

10. When counsel for the Commission asked what Respondent told Complainant regarding permission to install a ramp, West

testified Respondent told his wife that it was up to them if they wanted to install a ramp.

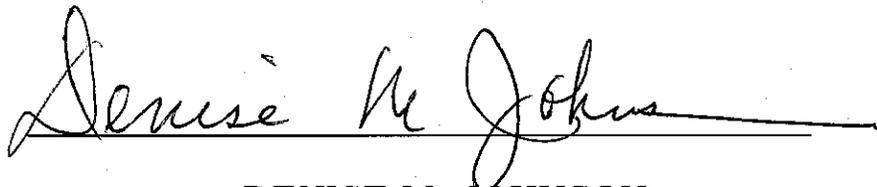
Q: What did [your wife] tell you?

A: He had to think about it, and he said it was up to us if we want to put the ramp in. (Tr. 11)

11. The testimony of the Commission's primary witness does not support the allegation that Respondent refused to make the requested accommodation.
12. Although Respondent did not defend against the Commission's complaint, the evidence in the record fails to support an inference of discrimination. To find otherwise would lead to an unjust result.

## RECOMMENDATION

It is therefore the recommendation of the ALJ that the Commission issue a Dismissal Order for Complaint No. 16-HOU-COL-41909.

A handwritten signature in cursive script that reads "Denise M. Johnson". The signature is written in black ink and is positioned above a solid horizontal line.

DENISE M. JOHNSON  
CHIEF ADMINISTRATIVE LAW JUDGE

Date mailed: October 25, 2017