



OHIO CIVIL RIGHTS COMMISSION

Governor John R. Kasich

Commissioners: Lori Barreras, Chair | Juan Cespedes | William Patmon, III | Dr. Carolyn Peters | Madhu Singh
Executive Director G. Michael Payton

June 13, 2018

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Kimberly Shores
c/o Freddie Shores
121 Country Place
Grafton, OH 44044
Respondent

Housing Research & Advocacy Center
c/o Kris Keniray, Director of Housing Enforcement
2728 Euclid Avenue, Suite 200
Cleveland, OH 44253
Complainant

**Re: Housing Research & Advocacy Center v. Kimberly Shores
Complaint No. 17-HOU- CLE-43462**

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, 5th 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
Darlene Newburn, Director of Operations and Regional Counsel
Stephanie Bostos Demers, Chief Legal Counsel



IN THE MATTER OF:

Housing Research & Advocacy Center

Complainant,

Complaint No. 17- HOU- CLE-43462

v.

Kimberly Shores

Respondent.

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

**MIKE DeWINE
ATTORNEY GENERAL**

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ALJ'S REPORT

Denise M. Johnson
Ohio Civil Rights Commission
Division of Hearings
30 East Broad Street, 5th Floor
Columbus, OH 43215
(614) 466-6684

Chief Administrative Law Judge



INTRODUCTION AND PROCEDURAL HISTORY

Housing Research & Advocacy Center (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on June 24, 2016.

The Commission investigated the charge and found probable cause that Kimberly Shores c/o Freddie Shores (Respondent) engaged in unlawful discriminatory practices in violation of Revised Code Section (R.C.) 4112.02(H).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on April 27, 2017.

The Complaint alleged that Respondent violated R.C. 4112.02(H) by eliciting information regarding familial status on Respondent's rental application for housing accommodations.

Respondent did not file an Answer. On December 22, 2017, the Commission filed a Motion for Default Judgment on the grounds that Respondent failed to answer or otherwise defend against the Commission's Complaint. The Administrative Law Judge (ALJ) granted the motion on January 9, 2018.

A public hearing was held via teleconference on February 8, 2018 between the Commission's Central Office at 30 East Broad Street in Columbus, Ohio and the Commission's Cleveland Regional Office at the Frank J. Lausche State Office Building located at 615 West Superior Avenue, Cleveland, Ohio. The record consists of the previously described pleadings, a transcript of the hearing consisting of 18 pages, exhibits admitted into evidence during the hearing,¹ and a post-hearing brief filed by the Commission on April 16, 2018.

¹ The Commission submitted the original exhibits on February 13, 2018, including the most recent annual report the ALJ directed Complainant's representative to provide. (Tr. 15)

FINDINGS OF FACT

The following Findings of Fact are based, in part, upon the ALJ's credibility assessment 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. Housing Research & Advocacy Center (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on June 24, 2016.
2. In a letter dated March 16, 2017, Respondent was notified of the Commission's probable cause finding that Respondent had engaged in unlawful discriminatory practices in violation of R.C. 4112.02(H).

3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint after conciliation efforts failed.
4. Complainant is a nonprofit fair housing organization and its mission is to promote fair housing and diverse communities, and to work to eliminate housing discrimination throughout Northeast Ohio by providing effective research, education and advocacy. (Tr. 7, Comm. Exh. 4)
5. Complainant conducted testing on Respondent's rental properties and found an issue with Respondent's rental application. (Tr. 8)
6. Respondent's rental application asks for the names and ages of any proposed occupants. (Tr. 9, Comm. Exh. 1)
7. Complainant sent a letter to Respondent requesting she revise the rental application. (Tr. 9-10, Comm. Exh. 2)
8. Respondent did not reply to Complainant's letter. (Tr. 10)

CONCLUSIONS OF LAW

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.

1. The Commission alleged in the Complaint that Respondent violated R.C. 4112.02(H) when Respondent requested information that related to familial status.

2. This allegation, if proven, would constitute a violation of R.C. 4112.02(H)(8), which provides in pertinent part that it shall be an unlawful discriminatory practice for any person to:

. . . make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning . . . familial status . . . in connection with the sale or lease of any 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(G) and 4112.06(E).

4. In the instant case the Commission introduced direct evidence that the Respondent's housing application made inquiries that are prohibited by R.C. 4112.02(H).
5. The statements elicited in Respondent's application have the effect of communicating to families with children that children are not preferred by the Respondent. *Soules v. U.S. Dept. of Housing & Urban Development*, 967 F.2d 817, 822 (2d Cir. 1992).
6. The Respondent's application contains illegal inquiries in violation of R.C. 4112.02(H)(8).
7. The Complainant is entitled to relief as a matter of law.

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).

9. The statute also provides that the Commission, in its discretion, may award civil penalties. R.C. 4112.05(G)(1).

ACTUAL DAMAGES

10. The purpose of an award of actual damages in a fair housing case, as in employment discrimination cases, “is to put 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).
11. When fair housing groups use resources to counteract discrimination and provide training, advertisement, and testing to address issues to insure housing and neighborhood choice to individuals, they can be awarded damages for diversion of resources and frustration of mission. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-379 (1982).
12. Diversion of resources damages is the harm caused by the diversion of resources away from other programs to address the defendants’ discriminatory practices. *Id.*
13. Frustration of mission is injury to “noneconomic interest in encouraging open housing.” *Id.* at 379 n.20.
14. To recover damages for frustration of mission, a fair housing organization must establish that expenditures in education, counseling or outreach are necessary to counteract the effects

of discrimination. *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 28-29 (D.C.Cir. 1990).

15. The Complainant chronologically itemized the expenditures associated with pre-litigation expenses from September 23, 2015 to January 3, 2018. (Comm. Exh. 3)
16. The Complainant is requesting \$1,562.50 for resources that were diverted to redress the discriminatory conduct of the Respondent. (*Id.*)
17. I found six expenditures billed at one quarter hour at \$175.00 per hour by Kineray to be excessive in light of the ministerial nature of the task performed (“Rec’d confirmation of hearing location by mail from ALJ’s office. Updated Outlook calendar appt.; Rec’d notice of pre-hearing conference by mail from ALJ Johnson. Added to Outlook Calendar; Rec’d notice of impasse by mail from V. Boggs at OCRC; Rec’d 100-day letter from OCRC citing need for additional time to complete investigative report. New anticipated date of completion is 6/24/17; Rec’d 100 day letter from K. O’Dell citing need to complete report. New anticipated date of completion of 6/24/17). (*Id.*)
18. Accordingly I recommend that the Complainant receives \$1,000.00 for diversion of resources.

19. The Complainant also asks for \$1,250.00 for frustration of mission damages. (Comm. Exh. 3)

20. Complainant asserts that its mission was frustrated based on the following reason:

Because Respondent Shores ignored The Housing Center's correspondence regarding the unlawful inquiry contained within her rental application, The Housing Center was forced to expend its resources addressing this matter and was unable to pursue other initiatives to fulfill its mission. (Comm. Exh. 3)

21. It's difficult to determine how spending eleven hours and forty-five minutes over a period of approximately two years overseeing the investigation and resolution on the instant matter frustrated or otherwise prevented the Complainant from pursuing other initiatives to fulfill its mission.

22. Therefore I find Complainant's request for frustration of mission damages to be excessive.

23. I recommend that Complainant receive \$150.00 for frustration of mission damages.

24. Based on the foregoing the ALJ recommends that the Complainant be awarded a total of \$1,150.00 for diversion of resources and frustration of mission damages.

ATTORNEY'S FEES

25. The Commission 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.

26. In order to create a record regarding attorney's fees, the Commission 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.

27. 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 their receipt of the Commission's and Complainant's Applications.

28. 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 with the

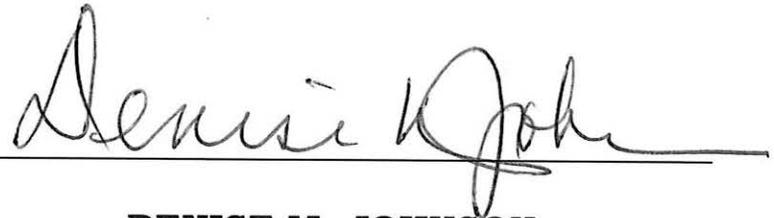
Commission's Compliance Department after the ALJ makes her Attorney's Fees Recommendation.

RECOMMENDATIONS

For all of the foregoing reasons, it is recommended in Complaint No. 17-HOU-CLE-43462 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 to pay Complainant \$1,150.00 in actual damages;
3. The Commission order Respondent, within six (6) months of the date of the Commission's Final Order, to receive training regarding the anti-discrimination fair housing laws of the State of Ohio. As proof of Respondent's participation in fair housing training, Respondent shall submit certification from the trainer or provider of services that Respondent has successfully completed the training; and

4. The Commission order Respondent, within seven (7) months of the Commission's Final Order, to submit its Letter of Certification of Training to the Commission's Compliance Department.

A handwritten signature in black ink, appearing to read "Denise Johnson", written over a horizontal line.

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date: June 13, 2018