



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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Deborah Ratliff
159 Whirlaway Loop SW
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Respondent

Danielle DeCarlo
P.O. 644
Newark, OH 43058
Complainant

Zachariah Grigsby
317 Elmwood Ave
Newark, OH 43055
Complainant

Re: Zachariah Grigsby and Danielle DeCarlo v. Debbie Ratliff
Complaint No. 17-HOU-COL-44252

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:

Zachariah Grigsby and Danielle DeCarlo
Complainants,

Complaint No. 17- HOU-COL-44252

v.

Debbie Ratliff
Respondent.

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

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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

Zachariah Grigsby and Danielle DeCarlo (Complainants) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on May 16, 2016.

The Commission investigated and found probable cause to believe that Debbie Ratliff (Respondent) engaged in unlawful employment 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 the Complaint on January 12, 2016.

The Commission alleged that: (1) Respondent's refusal to rent due to disability was a violation of R.C. 4112.02(H)(1), and (2) Respondent's refusal to make an accommodation to a person with a disability was a violation of R.C. 4112.02(H)(19).

Respondent filed an Answer to the Commission's Complaint January 31, 2017.

A public hearing was held on January 31, 2018, at the Licking County Library located at 101 West Main Street, Newark, Ohio.

The record contains previously described pleadings, a hearing transcript consisting of 152 pages, a post-hearing brief filed by the Commission on March 15, 2018 and Respondent's post-hearing brief filed on March 27, 2018.

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. Complainants filed a charge with the Commission on May 16, 2016.
2. The Commission determined on December 15, 2016, that it was probable that Respondent 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.
4. The Commission issued the Complaint after conciliation efforts failed.

5. Respondent and her son David A. Ratliff (David) are co-owners and managers of rental properties located in Newark, Ohio. (Tr. 73-74)¹
6. From 2006 to 2009 Complainant DeCarlo, Walter Bryant (Bryant), and their son Aiden lived in housing accommodations owned by Respondent and David. (Tr. 24, 26, 39)
7. In 2009, they moved into Respondent and David's property located at 449 Park Avenue, Newark, Ohio. (Tr. 26-27)
8. Toward the end of Complainant DeCarlo's tenancy, the property at 449 Park Avenue went into foreclosure. (Tr. 27)
9. Respondent removed the hot water tank while Complainant DeCarlo was still living in the unit. (Tr. 27)
10. Complainant DeCarlo stopped paying rent and did not put her rent into escrow. (Tr. 28, 78, 80)
11. After Complainant DeCarlo moved out of 449 Park Avenue her son Aiden was diagnosed with emotional stability disorder and Post Traumatic Stress Syndrome (PTSD) in 2014. (Tr. 26, 41)

¹ David was named as a Respondent in the Commission's complaint. However, the Commission failed to attempt conciliation prior to the issuance of the complaint and David was dismissed as a party for lack of jurisdiction. R.C. 4112.05(B)(5).

12. Aiden was prescribed an emotional support animal by his therapist. (Tr. 26)
13. In May of 2016, Complainants looked for a place to rent together and found Respondent's property through Craigslist. (Tr. 30-31)
14. Complainant DeCarlo's lease for the apartment that she and her son occupied was set to expire in May of 2016. (Tr. 35, 37)
15. Complainant Grigsby contacted Respondent about viewing the property and also mentioned having a support animal. (Tr. 117)
16. Respondent showed Complainants the property but she informed Complainants she felt more comfortable renting a different unit to them to accommodate the emotional support animal and another renter with a disability. (Tr. 32-33)
17. The neighbor next door to the unit that Complainants viewed had a son with Autism who was also scared of dogs. (Tr. 32-33)
18. Complainants filled out a rental application. (Tr. 33)
19. A few weeks later, Complainants went to the open house of the rental unit suggested by the Respondent which is located at 208 Isabelle Road, Newark, Ohio. (Tr. 34)

20. After attending the open house, Complainants contacted Respondent via text message and told her they wanted that unit. (Tr. 35)
21. Respondent did not respond to Complainants. (Tr. 35)
22. On May 16, 2016, Complainant DeCarlo contacted Respondent via text message to find out if they got the apartment. (Tr. 36-37, Comm. Exh. 6)
23. Respondent told Complainant DeCarlo that she would not rent to Complainants because they had a no-pet policy. (Tr. 37-38, 119, Comm. Exh. 6)
24. Respondent's policy requires prior approval before an animal is approved to move in with renters. (R. Exh. A)
25. Complainants moved in with Bryant when their lease expired. (Tr. 39)
26. After three months Complainant Rigsby move in with his father. (Tr. 39)

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 Respondent's practice and policies regarding households with people with disabilities violate R.C. 4112.02(H)(1) and (19) which provide that it is an unlawful discriminatory practice for any person to:²

- (1) Refuse to (...) rent, lease, sublease, (...), refuse to negotiate for (...) rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of (...), disability, (...);
- (19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling

² The Commission did not present an argument in its brief in support of a violation of R.C. 4112.02(H)(2).

unit, including associated public and common use areas;

2. The Commission asserts that the Respondent refused to waive her no-pet policy and failed to rent to Complainants and provide a reasonable accommodation to Complainant DeCarlo's son because he is disabled and prescribed an emotional support animal by his doctor.
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 Med. 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. *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).

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. Proof required to establish a prima facie case may vary on a case-by-case basis. *Id.* at 802, n.13. 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 DeCarlo has a child who is disabled;
- (2) The 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. Ass'n. of Apt. Owners of 2987 Kalakaua, 453 F.3d 1175, 1179 (9th Cir. 2006).

8. Complainant DeCarlo's son Aiden was diagnosed with emotional stability PTSD after 2009. (Tr. 26)
9. Aiden's therapist prescribed an emotional support animal for him to ameliorate the effects of his PTSD. (Tr. 26)
10. The emotional support animal was a reasonable accommodation given Aiden's diagnosis of PTSD.
11. Although Complainants made Respondent aware that Aiden had an emotional support animal, Respondent refused to rent the apartment to Complainants because of a no-pet policy.
12. In the instant case the Respondent did not introduce evidence to rebut the Commission's prima facie case.
13. The Respondent asserted that the reason Complainants were denied rental of housing accommodations was based on the damaged condition that Complainant DeCarlo had previously left an apartment in that Respondent owned. (Tr. 79-80)
14. When the Respondent refuses to rent to an individual with a disability who has requested a reasonable accommodation, the Respondent bears the burden of establishing the basis for refusing to rent to that person.

If an applicant, because of disability, is refused housing accommodations or discriminated against in any term, condition or privilege in the

sale, assignment, transfer, renting, subleasing, or financing of housing accommodations, the owner, landlord, proprietor, or agent shall have the burden of establishing the basis for such refusal or discrimination. Ohio Administrative Code (O.A.C.) 4112-5-07(E).

15. The Commission introduced direct and circumstantial evidence that shows that Respondent's reason for not renting to Complainants because of Complainant DeCarlo's previous rental history is pretextual.

16. Pretext may be proven either by direct evidence or circumstantial evidence. *Plumbers & Steamfitters Joint Apprenticeship Committee v. Ohio Civil Rights Comm.*, 66 Ohio St.2d 192, 198 (1981).

Direct evidence is that evidence which, if believed, requires the conclusion that unlawful discrimination [i.e., the unlawful characteristic] was at least a motivating factor in the [Respondent's] actions. *White v. Columbus Metropolitan Housing Authority*, 429 F.3d 232, 238 (6th Cir. 2005).

17. Respondent admitted during the Commission's investigation that she did not rent to Complainants because she had a no-pet policy. (Tr. 55-56)

18. The Commission introduced evidence of a text message sent to Complainant DeCarlo who wanted to know the status of their rental application:

Q: Okay. Would you just read the---just read the first line, please. Do this for me, please. Read what you stated to her in your original message.

A: Okay. In the very first message that was sent, I stated, "Debbie, its Danielle. I know you work and we've been bugging you, but I haven't heard from you about 208 Isabelle. If you don't want to rent it to us, I would really appreciate it if you would just say that. I really need to know because I only have a few days and I need to figure things out. Thank you for any response."

Q: Okay. Did you get a response?

A: I did.

Q: What was the response?

A: The response was, "I forgot that you have a dog. I'm not taking pets anymore, so I've rented it to someone with no pets."

Q: Okay. And then did you reply to that?

A: I did.

Q: What did you say?

A: My response was, "The dog was why you had us wait to be able to move into 208 because of the hardwood downstairs. (...) Keep in mind Gemma isn't a pet. She is a mental health companion for Aiden, and using her as a reason to not rent to us is not only a false reason, but also discrimination. But that's on your head. Thanks anyway." (Tr. 37-38)

19. At the hearing Respondent shifted her reason for not renting to Complainants from the no-pet policy to not wanting to rent to Complainant DeCarlo because of damage that was done during her tenancy at 449 Park Avenue and because she didn't pay rent for months. (Tr. 119)
20. I did not find her shifting reasons to be credible for the following reasons.
21. Although Respondent asserted that she rented to people with disabilities, there was no evidence that any of those disabled tenants had emotional support animals.
22. Complainant DeCarlo lived at 449 Park Avenue for more than three months after Respondent removed the water heater. (Tr. 28)
23. Complainant DeCarlo admitted that she left the apartment messy and in need of cleaning but denied doing damage to the cabinets, wall, and floors. (*Id.*)
24. I believed Complainant DeCarlo's testimony.

25. The Respondent's conduct of denying rental to Complainants based on the refusal to waive a no-pet policy to accommodate an individual with a disability is a violation of R.C. 4112.02(H)(1) and (19).

26. The Complainants are entitled to relief as a matter of law.

DAMAGES

27. 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).

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

ACTUAL DAMAGES

29. The purpose of an award of actual damages in a fair housing case, as in employment discrimination cases, "is to put the [Complainants] in the same position, so far as money can do it, as [the Complainants] 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).
30. 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).
31. 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." *Laudon v. Loos*, 694 F.Supp. 253, 255 (E.D. Mich. 1988).

32. The Commission did not introduce any evidence that the Complainants had any economic or out of pocket expenses because of being denied housing by Respondent.
33. The Commission requested an award for emotional distress damages in the amount of \$5,000.00 each for the Complainants based on not being able to live together for a year after they were denied housing accommodations by the Respondent.
34. Emotional injuries are difficult to quantify and depend on an evaluation by the ALJ of the testimony elicited by the Commission in support of an award of such damages.
35. In the instant case I find the award requested by the Commission to be excessive based on the cursory nature of the Complainant DeCarlo's testimony.
36. Complainant DeCarlo had not renewed her lease in her apartment that she and her son were living in and had to move out. (Tr. 30)
37. Complainants ended up living together for three months with Bryant in his apartment before Complainant Grigsby moved out. (Tr. 39)
38. There was no evidence that Complainants sought to rent another apartment comparable to the one they were denied by the Respondent.

39. I did not find Complainant DeCarlo's testimony to be persuasive or compelling enough to support an award of \$5,000.00 each for the inconvenience of not be able to live together for a year.
40. The ALJ recommends that the Complainants be awarded \$500.00 each for the inconvenience that they experienced by not being able to live together for a year.

PUNITIVE DAMAGES

41. 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. *Shoenfelt 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).

42. 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 Complainants.

O.A.C. 4112-6-02.

43. Applying the foregoing criteria to this case:

- The Commission did not present prior history of discrimination by Respondent;
- There is no evidence in the record that Respondent, whose business it is to offer housing accommodations for rent or lease to the public, has had Fair Housing training. Complainant attempted to inform Respondent that her actions were a discriminatory denial of housing based on her son's need for an accommodation because of his disability but the Respondent did not reply.
- The Commission did not introduce evidence of Respondent's size and profitability.
- There was evidence introduced by the Commission's investigator that Respondent was uncooperative with the Commission during its investigation. (Tr. 56-57)

44. Based on the foregoing discussion, the ALJ recommends that Respondent be assessed punitive damages to be awarded to Complainant DeCarlo in the amount of \$500.00 and to Complainant Grigsby in the amount of \$500.00.

ATTORNEY'S FEES

45. 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.

46. In order to create a record regarding attorney's fees, the Commission's counsel should file affidavits from plaintiffs' attorneys in Licking 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.

47. 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 receipt of the Commission's Application for Attorney's Fees.

48. 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. 17-HOU-COL-44252 that:

1. The Commission orders Respondent to cease and desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code;
2. The Commission orders Respondent to pay Complainant DeCarlo \$500.00 and Complainant Grigsby \$500.00 in actual damages; and
3. The Commission orders Respondent to pay Complainant DeCarlo \$500.00 and Complainant Grigsby \$500.00 in punitive damages.
4. 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

5. 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