

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & CINDY L. GRANDERSON,  
Complainants

v.

DOCKET NO. 05-BPR-02009

REMAX FLAGSHIP &  
UNITED PROPERTIES,  
Respondents

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Appearances:

Caitlin A. Sheehan, Esquire, Commission Counsel  
Arnold E. Cohen, Esquire for Remax Flagship & United Properties

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 2, 2005, Complainant Cindy Granderson filed a complaint with this Commission charging Remax Results<sup>1</sup>, L. Mehlarini Tomares and Margarida Nicoli with discrimination in housing on the basis of race in violation of M.G.L.c.151B§4. On January 31, 2007, the complaint was amended to add Remax Flagship and United Properties as Respondents.<sup>2</sup> A public hearing was held before me on July 12, 2007 wherein the case proceeded against the above-captioned Respondents only. After careful consideration of the record before me and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

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<sup>1</sup> In 2005, Remax Flagship and United Properties purchased the Remax Results office from Brian Flynn. It was disputed whether the transfer of ownership was completed by July 19, 2005, the date of the events that are the subject of this complaint.

<sup>2</sup> Granderson settled her claims against Respondents Remax Results, L. Mehlarini Tomares and Margarida Nicoli prior to the public hearing.

## II. FINDINGS OF FACT

1. Complainant Cindy Granderson (“Complainant”) is a black woman who is married to Daniel Cherry, Jr., a Caucasian man of Italian descent.<sup>3</sup>

2. Mehlarini Tomares owns the two-family house located at 8 Hadley Street, Medford, Massachusetts. In July 2005, she listed a three-bedroom apartment at that address through Rick Lombardi, owner of Respondent United Properties.

3. Margarida Nicoli is a licensed realtor formerly employed by Respondents United Properties and Remax Flagship, located on Lincoln Avenue in Saugus, Massachusetts. As of July 19, 2005, Nicoli was employed by United Properties and showed rental units to prospective tenants.

4. Rick Lombardi owns both Remax Flagship and United Properties with his wife, Renee Knight. Respondent United Properties is located on Main Street in Malden, Massachusetts. Advertisements for rentals are written on listing sheets, which are kept in the office. Lombardi wrote the listing sheet for the rental unit located at 8 Hadley Street in Medford in July 2005.

5. The evidence at the hearing revealed that Respondent Remax Flagship is involved in sales only and did not list the property that is the subject of the complaint in this matter.

6. In July 2005, Complainant sought to move from Quincy to Medford to be closer to her mother, who was ill. Complainant and Cherry, who was then her boyfriend, began to look for an apartment. On or about July 19, 2005 Complainant saw an

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<sup>3</sup> Complainant is fair-complexioned and observers might not necessarily identify her as “black” or “African-American.”

advertisement posted on the website Craigslist.com for a three-bedroom apartment in Medford, Massachusetts. She called the telephone number listed in the advertisement and spoke to realtor Margarida Nicoli, with whom she arranged a time to view the apartment.

7. On July 19, 2003, Complainant and Cherry met Nicoli at the property at 8 Hadley Street in Medford. The three then went up to the house and Tomares, the owner, came out to greet them.

8. Complainant and Cherry liked the apartment, which they described as nice, spacious and beautiful. Both were interested in renting the unit, which cost \$1,300.00 per month, although Complainant believed it was listed at \$1,200.00. Complainant and Cherry were willing and able to pay the asking rental price.

9. Tomares took Complainant, Cherry and Nicoli on a tour of the entire house, including a basement apartment. Then they all went out on the porch. They were laughing and joking and Tomares was telling Complainant and Cherry what beautiful people they were. Complainant and Cherry complimented Tomares on the house and the neighborhood.

10. Both Complainant and Cherry testified that as they were discussing the neighborhood, Tomares stated words to the effect of "I already told Rick that I don't rent to niggers," or "Don't bring me any niggers." Complainant and Cherry did not know who "Rick" was. I credit their testimony.

11. Tomares then asked Complainant and Cherry what ethnicity they were. Cherry said he was Italian. She said "good" and then looked at Complainant, who stated, "I'm black."

12. After Complainant said, "I'm black." Tomares said, "No!" She and Nicoli's mouths fell open and they appeared shocked and in disbelief.

13. Tomares then said "That's okay. You're beautiful people anyway."

14. Complainant then stated that maybe the apartment was a little too much money. She testified that she said this because she was on the verge of tears, totally rattled, in disbelief and needed to get out of there. Cherry was disgusted because Complainant is African-American and Tomares' statement was "a big problem for them." Cherry testified that Complainant appeared very upset and uncomfortable. He, too, just wanted to get her out of there as quickly as possible.

15. Complainant, Cherry and Nicoli all then left the house. Nicoli then handed them her business card, which read, "Remax Results" and told them she would have other apartments coming up. Cherry stated he did not want to talk to Nicoli when they left the apartment, as he was disgusted with her.

16. Complainant testified that she could not live at Tomares' apartment after the remark about "niggers" even though Tomares called her and Cherry "beautiful people" after finding out she was black. Complainant stated that she has darker-skinned family members whom she frequently entertains at her home and did not want to subject them to Tomares' attitude toward African-Americans or to create problems for her family members or for herself.

17. Complainant testified that after Nicoli's non-response to the comment made by Tomares, she could not rent a property shown by Nicoli even if one were offered. Complainant testified that she did not want to do business with the real estate agency that

rented the unit because she does not “deal with people who discriminate.” Cherry also did not want to work with Nicoli or the real estate agent any longer.

18. After the incident, Nicoli left Complainant a couple of messages to call her about other listing. Complainant did not respond to Nicoli’s messages because she did not want to do business with Nicoli or the real estate agency.

19. Complainant testified that Tomares’ remarks made her feel “less than zero.” She was also hurt, shocked, upset and in disbelief over Nicoli’s non-response to the remark. Upon leaving, when Nicoli handed them her business card, she was dumbfounded.

20. Complainant discussed the incident with Cherry nearly every day, to the present time. She stated that she felt “pretty disgusted that this still goes on in this day and age and was “surprised that it is still so blatant.” Complainant stated that she has a great job and makes good money, yet finds it ridiculous that she would not be rented an apartment based on her “ethnicity.”

21. Complainant and Cherry testified that this was the second incident of discrimination in housing that they had encountered that day. They encountered another incident with another home owner in the same neighborhood no more than an hour earlier. Complainant was shaking and couldn’t believe that this was the second incident within the same day. Cherry stated that if Nicoli had spoken up and at least apologized, the situation would have been a little less intolerable. I credit the testimony of both Complainant and Cherry in its entirety.

22. Nicoli testified that she worked for both Remax Flagship in Saugus, which did not handle rentals and for United Properties, which did handle rentals. Nicoli received payment from United Properties only if she rented a property listed by them.

23. Nicoli testified that she had not met Tomares before the incident with Complainant and Cherry. She corroborated Complainant's and Cherry's testimony, in essence. She testified that Tomares remarked that she had recently seen Rick Lombardi and stated that she told him not to bring niggers to the rental unit. According to Nicoli, Tomares then asked Complainant and Cherry about their nationality and when Complainant stated that she was black, Tomares remarked, "Oh, but I like you."

24. Nicoli testified that she was shocked at Tomares' statement and tried to get out of there as quickly as possible. Nicoli testified that she did not respond to Tomares' remark about "niggers" because she did not feel it was her position to say anything at the time. She got in her car and tried to call Lombardi, and then Renee Knight. She told Knight what had occurred and said they would have to address the matter with Tomares. She stated that Lombardi was also surprised to learn of Tomares' remarks to the prospective tenants. I credit Nicoli's testimony.

25. Tomares testified that she rented the apartment through Lombardi, with whom she had listed the rental unit many years before, and recalled telling him she wanted quiet, clean nice people. She did not recall telling Rick that she did not want to rent to black people. I credit her testimony.

26. Rick Lombardi has been in the real estate business since 1988, first as an agent and then as a broker. At some point before joining Remax Results in late 2003, Lombardi had established United Properties which acted as a broker for landlords seeking

to rent apartments. Lombardi and Renee Knight purchased the Medford office of Remax Results in the summer of 2005. According to Lombardi, the sale transaction was finalized after the July 19, 2005.

27. Lombardi stated that he first showed Tomares' apartment in 2001 when he was co-owner of a brokerage company called Premier Properties, but did not hear from her again until 2005. He stated that Tomares never told him she did not want to rent to African Americans. He stated that if she had made such a statement, he would have ripped up the listing sheet and taken the listing off the market. I credit his testimony.

28. Lombardi stated that he first learned about the incident in question, after the fact, from his wife, Renee Knight. He later spoke to Nicoli about the incident. He stated that he called Tomares and asked if she had said the words that were attributed to her. Her response was yes, but that it was not what she meant. Lombardi told her what she meant did not matter and that he could no longer do business with her. Lombardi stated that he has never had a blemish on his record as a realtor. I credit his testimony.

### III. CONCLUSIONS OF LAW

#### A. Respondents

The Respondents Remax Flagship and United Properties were added as party Respondents by the Investigating Commissioner in response to a motion by Complainant. However, the uncontroverted evidence adduced at the hearing was that United Properties was the listing agency in this matter and that Remax Flagship was not involved in renting properties and did not list the subject property. Therefore, I hereby dismiss Respondent Remax Flagship as a party Respondent in this matter

## B. Evidence

M.G.L.c.151B§4¶6 prohibits discrimination on the basis of race and color in housing by any “...licensed real estate broker...or other person having the...right to rent...” housing accommodations, including multi-unit apartment buildings. The word “person” is defined broadly, and includes partnerships, corporations, and trustees. G.L.c. 151B§1. Complainant alleges that Respondent United Properties committed an unlawful practice by accepting the listing from Tomares after Tomares told “Rick,” whom Complainant contends is Richard Lombardi, owner of United Properties, that she “does not rent to niggers.” Complainant also attempts to bind United Properties for Nicoli’s non-response to Tomares’ comment.<sup>4</sup>

While the formal rules of evidence do not apply to proceedings before the Commission under M.G.L. c.30A and to 151B§5, it is nonetheless necessary to establish a prima facie case of discrimination by a preponderance of the credible evidence. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. M.G.L. c. 30A, §11(2). The evidence of discrimination that would bind United Properties in this matter consists solely of a hearsay statement by the landlord Tomares, that she told “Rick” or “Rick Lombardi,” not to send her any “niggers.” Tomares testified she did not recall giving Lombardi such a directive and Lombardi denied that Tomares gave him such a directive and testified credibly that he would not have continued to do business with her had she made such a statement.

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<sup>4</sup> I note again that Nicoli was a named party Respondent who settled with Complainant.

Where hearsay evidence contains all the indicia of reliability and credibility that such hearsay must meet, Nelson v. Commissioner of Correction, 390 Mass.379 (1983) and is uncontradicted in the record, it may well be sufficiently reliable to support a conclusion. Murphy, et al v. Superintendent, Massachusetts Correctional Institution, Cedar Junction, et al, 396 Mass. 830, 834 (1985). However, in some instances hearsay standing alone in support of a conclusion may not be substantial evidence, especially when it is contradicted by more reliable evidence. Goodridge v. Director of the Div. of Employment Sec., 375 Mass 434 437 & n.2 (1978). In this case, where the hearsay statement of Tomares is directly contradicted by Lombardi's credible testimony, as well as her own testimony at the hearing that she did not recall actually making the statement to Lombardi, I conclude that the statement is not sufficiently reliable to support the conclusion that Lombardi was given this directive and then proceeded to list the rental property in violation of M.G.L.c.151B. Therefore, I conclude that Complainant has failed to establish a prima facie case of discrimination in housing only as against Respondent United Properties on the basis of race.

#### C. Nicoli's Non-response

Complainant further argues that upon hearing Tomares' discriminatory comment, the agent, Nicoli, should immediately have stated to Tomares that she could no longer list the property and ceased doing business with Tomares.

Assuming, arguendo, that the hearsay statement of Tomares was sufficient to bind United Properties, I am nevertheless led to the conclusion that Respondent United Properties is not liable solely for Nicoli's non-response to Tomares. Nicoli testified credibly that she received no instructions on renting or showing the apartment. In fact,

Nicoli showed the apartment to Complainant and Cherry without regard to their race or ethnicity and offered to show them more apartments. I cannot conclude that her failure to respond to Tomares' comment, without more, at the moment when she, too, was most likely shocked and disgusted, cannot in and of itself, bind United Properties.

While Tomares' remarks were offensive and discriminatory, I cannot conclude that Nicoli's failure to immediately respond to the statement, absent anything more, can legally bind United Properties and make the company liable for a discriminatory remark, that Lombardi denied receiving or acting upon. Once Lombardi became aware of the comment he ceased doing business with Tomares. Therefore, I conclude that Respondent United Properties is not liable for unlawful discrimination and I hereby order that the above-referenced matter is dismissed.

#### IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final decision of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal within ten days of receipt of this order and a Petition for Review within 30 days of receipt of this order.

SO ORDERED, this 3<sup>rd</sup> day of December 2007.

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JUDITH E. KAPLAN,  
Hearing Officer