

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
CYNTHIA J. LEVEILLE

Complainant

v.

Docket No. 01260072

CHERRY HILL ESTATES
CONDOMINIUM TRUST,
RENAISSANCE REALTY TRUST,
K. GUNNAR GILLBERG,
GEORGE J. LEONTIRE, and DOREEN TRINE

Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Lindsay Byrne in favor of Complainant, Cynthia Leveille. Following an evidentiary hearing, the Hearing Officer concluded that while Respondent Renaissance Realty Trust was liable for unlawful housing discrimination in violation of M.G.L. c. 151B, Section 4(10), Respondent Doreen Trine was not individually liable for said discrimination. Complainant filed an appeal to the Full Commission as to the Hearing Officer's finding with respect to the liability of Respondent Doreen Trine.

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 et. seq.), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, Section 5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding...." Katz v. MCAD, 365

Mass. 357, 365 (1974); M.G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and/or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007. 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.16(f).

I. COMPLAINANT'S PETITION FOR REVIEW

Complainant contends on appeal that the Hearing Officer erred as a matter of law by not finding Respondent Doreen Trine individually liable for housing discrimination. Complainant's request for review rests on her specific assertion that the Hearing Officer applied the wrong legal standard in finding Trine not liable.

It is Complainant's contention that Trine, the site manager employed by Respondent Renaissance Realty Trust, is liable for discrimination against Complainant because M.G.L. Chapter 151B, section 4(10) provides that it is unlawful "for any person furnishing credit, services or rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance, including . . . rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program." Complainant argues that the Hearing Officer should have found that Trine was a person furnishing rental accommodations under the statute and that she discriminatorily denied Complainant the right to rent the apartment.

We disagree. The Hearing Officer specifically found that Trine acted “under the direction and control of the Respondent Renaissance Realty Trust when she told prospective renters that the Respondent did not accept Section 8 housing subsidies.” As such, the Hearing Officer concluded that Trine was not the decision maker with respect to Complainant’s eligibility. She was following Respondent Renaissance Realty Trust’s express policy. As a result, the Hearing Officer found that Renaissance Realty Trust, not Trine, was liable under c.151B, s.4(10). The Hearing Officer’s findings and conclusions in this regard are supported by substantial evidence and are not erroneous as a matter of law, and we, therefore defer to them.

We also note that, though not specifically stated, the Hearing Officer considered whether Trine was liable under c.151B, s.4(4A) for having “interfered” with Complainant’s rights under c.151B. The Hearing Officer declined to find Trine individually liable under that section because she concluded that Trine did not possess “individual intent to engage in illegal discrimination.” We conclude that, in doing so, the Hearing Officer applied the correct legal standard.

The Hearing Officer cited as support for her decision Woodason v. Norton School Committee, 25 MDLR 62 (2003), which states that in order for an individual to be held liable for interfering with a complainant’s rights in violation of section 4(4A), the individual must have acted “in deliberate disregard of Complainant’s rights.” The issue is also governed by Bendell v. Lee, 25 MDLR 106 (2003), which follows and further clarifies Woodason. In Bendell, an individual was found liable not simply because he was the decision maker in a decision to terminate the complainant’s employment, but because he was “motivated by discriminatory intent.” The Full Commission in Bendell held specifically that “[t]o the extent that the conclusion could imply that an individual could be held liable simply because he or she was the decision maker or the messenger of the decision, we decline to adopt such an interpretation.” Id. at 107.

Complainant's contention that Trine is individually liable under section 4(4A) simply because she was the individual who personally carried out Respondent's admittedly discriminatory policy toward Complainant must therefore be rejected. Bendell states: "As we stated in Woodason, the term 'interfere' must be interpreted in the context of the statute and, as such, requires a showing of discriminatory motive." Id. at 107. The Hearing Officer applied the correct legal standard and determined that Trine did not possess the requisite motive to be held liable under section 4(4A). We find that the Hearing Officer's factual findings upon which such conclusion was based were supported by substantial evidence.

We have carefully reviewed Complainant's contentions on appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law with respect to the Hearing Officer's findings. We find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them. Therefore, we deny the appeal and affirm the Hearing Officer's decision.

II. COMPLAINANT'S PETITION FOR ATTORNEYS' FEES AND COSTS

We conclude that Complainant prevailed in this matter and is entitled to an award of reasonable attorneys' fees and costs. See M.G.L. c. 151B, s. 5. Complainant has filed a petition seeking attorneys' fees and expenses, supported by detailed contemporaneous time records, requesting fees in the amount of \$16,817.50 and costs in the amount of \$1,190.00. Respondents have filed no opposition thereto.

A. FEES

M.G.L. chapter 151B allows prevailing complainants to recover attorneys' fees. The determination of whether a fee sought is reasonable is subject to the Commission's discretion. The Commission has adopted the "lodestar" methodology for fee

computation. By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by a reasonable hourly rate. Baker v. Winchester School Committee, 14 MDLR 1097 (1992).

Only those hours that are reasonably expended are subject to compensation under M.G.L. c.151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Id. at 1099.

Counsel Erin Kemple seeks reimbursement for 73 hours of work that she performed at an hourly rate of \$185.00. Counsel Eric Bove seeks reimbursement for 5.75 hours of work that he performed at an hourly rate of \$160.00. Counsel Marian Kent seeks reimbursement for 14.5 hours of work that she performed at an hourly rate of \$165.00. Having reviewed the contemporaneous time records that support this request, we conclude that the amount of time spent on preparation and litigation of this claim is reasonable. Our review points to no evidence that the hours spent were duplicative, unproductive, excessive or otherwise unnecessary to the successful prosecution of the claim. Furthermore, all hours for work performed are sufficiently documented. We conclude that the hours for which reimbursement is sought are reasonable. We also conclude that the rates charged by Attorneys Kemple, Bove and Kent are consistent with rates customarily charged by attorneys with comparable experience and expertise in such cases and are well within the range of rates charged by attorneys in the Springfield area of similar experience. We therefore award attorneys' fees in the amount of \$16,817.50.

B. COSTS

Complainant's attorneys also seek reimbursement for costs in the amount of \$1,190.00. These costs include expenses related to the taking of depositions in this matter and postage. We find that these costs are adequately documented and reasonable. Accordingly, we award them to Complainant.

III. ORDER

The Complainant's appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer, including the award for emotional distress, is affirmed in its entirety. It is hereby ordered that:

- (1) The Complaint against Doreen Trine individually is DISMISSED.
- (2) The Complaint against Trustees Gillberg and Leontire in their official and individual capacities is DISMISSED.
- (3) Respondent Renaissance Realty Trust shall immediately cease and desist from any form of illegal housing discrimination.
- (4) Respondent Renaissance Realty Trust shall pay to Complainant the sum of \$10,000.00 in damages for emotional distress, with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed, until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue. Payment shall be made within forty-five (45) days of receipt of this decision.
- (5) Respondent Renaissance Realty Trust shall pay to Complainant the sum of \$16,817.50 in attorneys' fees and \$1,190.00 in costs. Payment shall be made within forty-five (45) days of receipt of this decision.
- (6) The Parties shall notify the Clerk of the Commission as soon as the ordered payments have been made.

This order represents the final action of the Commission for purposes of M.G.L. c.30A. Failure to comply with this order will result in the Commission's initiation of

enforcement proceedings, pursuant to 804 CMR 1.25, which may subject the noncomplying party to both civil and criminal penalties as provided in M.G.L. c.151B, s.8.

Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review within thirty (30) days of receipt of this decision in accordance with M.G.L. c.30A, c.151B, s.6, and the 1996 Standing Order on Judicial Review of Agency Actions. The filing of a petition pursuant to M.G.L. c.30A does not automatically stay enforcement of this order. Failure to file a petition in court within thirty (30) days of receipt of this order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c.151B, s.6.

SO ORDERED this 10th day of December, 2003.

Dorca I. Gomez
Chairwoman

Walter J. Sullivan, Jr.
Commissioner