

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

\*\*\*\*\*

DAWN PORTIS and  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION,

Complainants

Against

Docket No. 97-BPR-4718

JEAN and MARIE PAUL.  
Respondents

\*\*\*\*\*

Appearances: Joseph L. Edwards, Jr., Esq. for Complainant Portis  
Donald Bertrand, Esq. for Respondents

DECISION OF THE HEARING OFFICER ON REMAND

I. PROCEDURAL HISTORY

On September 25, 2003, the Full Commission remanded this matter to me for further findings. It rejected my conclusion that one of the Respondents' reasons for refusing to rent to Complainant – the cost of repairs required to bring their unit into Section 8 compliance – was a legitimate, non-discriminatory reason. In doing so, however, the Full Commission noted that Respondents had advanced an additional, non-discriminatory reason for not renting to Complainant, to wit: “concern about their personal safety in light of newspaper charges involving Complainant.” In its order of

remand, the Full Commission has directed me to make findings as to whether the discriminatory reason – failure to comply with the health code – “was a ‘material and important ingredient’ in the decision-making calculus.” See Order of the Full Commission *quoting* Chief Justice for Administration and Management v. MCAD, 439 Mass. 729, 735 (2003); see also Wynn & Wynn v. MCAD, 655, 668 (2000) (Supreme Judicial Court upheld hearing officer’s finding that although respondent’s decision not to offer the plaintiff a position may have resulted “in part” from concerns about her performance, its actions were “motivated primarily by unlawful discriminatory animus.”).

In accordance with the order of the Full Commission, I make the following supplemental findings relative to whether the Respondents’ failure to comply with the health code was the primary factor in their determination not to rent to Complainant.

## II. SUPPLEMENTAL FINDINGS OF FACT

1. In October 1997, Respondent Jean Paul discussed with Complainant the possibility of Complainant renting an apartment owned by Respondent on the second floor of 17-19 Clare Ave. Respondent Paul subsequently saw Complainant’s picture in the newspaper in connection with charges involving stolen property.
2. Respondent Jean Paul told MCAD Compliance Officer Roosevelt Simil in a telephone conversation that took place after the discrimination charge was filed that he changed his mind about renting to Complainant after he saw her picture in the newspaper. Paul told

Simil that he did not want to rent to Complainant because he had seen her picture in the newspaper in connection with a charge involving stolen property (finding of fact 12 in the original Decision of the Hearing Officer, 9/12/2000).

3. Compliance Officer Simil recorded in a handwritten memorandum of his telephone conversation with Respondent Jean Paul that Paul had “changed his mind [about renting] after he saw Complainant’s picture among several other people charged with stolen property.” Joint Exhibit 2. Compliance Officer Simil also included in his handwritten memorandum the statement that Respondent Paul relied on his lack of a Section 8 Housing Certificate as the reason for refusing to rent to Complainant because he was afraid for his family’s safety and embarrassed to tell the truth. Id.

4. At the public hearing Respondent Jean Paul denied that he refused to rent to Complainant because of seeing her picture in the newspaper in connection with charges involving stolen property but conceded in his Request for Reconsideration of the Probable Cause Finding that the matter was “a concern.”

### III. CONCLUSIONS OF LAW

The facts as found in my original decision (9/27/2000) establish that in February 1998, Respondents rented their second floor unit to another tenant who did not have a Section 8 rental subsidy. Respondent Paul acknowledged at the public hearing that he did not want to rent the second floor unit to Complainant because he did not want to

undertake the cost of repairs required to bring the unit into Section 8 compliance. Respondent Paul also conceded prior to the public hearing, but not at the hearing itself, that another reason for not wanting to rent to Complainant was concern about her possible involvement in criminal activity.

The Full Commission has determined that the first reason for declining to rent to Complainant – noncompliance with Section 8 -- is not a legitimate defense to a claim under c. 151B, sec. 4(10). See Attorney General v. Brown, 400 Mass. 826 (1987); Whitford v. Ford, 13 MDLR 1001 (1991). However, it determined that the second reason -- concern about personal safety and possible involvement in criminal activity -- constituted a non-discriminatory reason for refusing to rent to Complainant. On remand, I am directed to determine which reason was the primary rationale for Respondents' action.

Having reviewed the credible evidence before me, it appears that both reasons were factors in the decision-making process. Under a mixed-motive framework, the plaintiff must first prove by a preponderance of the evidence that a proscribed factor played a motivating part in the challenged employment decision. See Wynn & Wynn, P.C. v. MCAD, 431 Mass. 655, 664-666 (2000). Complainant Portis fulfilled this burden. Once plaintiff satisfies this requirement, the burden of persuasion shifts to the defendant who must prove that it would have made the same decision even in the absence of the illegitimate motive. Id. Having reviewed all the evidence, I conclude that the Respondents would have made the same decision, i.e., declined to rent their second floor

apartment to Complainant, whether or not she met Section 8 certification requirements. Accordingly, the reasons, in their totality, do not constitute discrimination in housing in violation of M.G.L. ch. 151B, sec. 4, para. 10.

### III. ORDER

Pursuant to the authority granted to the Commission under Massachusetts General Laws, chapter 151B, sec. 5, the complaint is dismissed.

Pursuant to 804 CMR 1.23, any party aggrieved by this decision may seek review by the full Commission by filing a notice seeking review within ten (10) days of receipt of this decision, and a petition for review within thirty (30) days of receipt of this decision.

SO ORDERED this 5<sup>th</sup> day of March, 2004.

---

Betty E. Waxman  
Hearing Officer