

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

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DAWN PORTIS)	
Complainant)	
v.)	97-BPR-4718
)	
JEAN and MARIE PAUL)	
Respondents)	
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ORDER OF THE FULL COMMISSION

This matter has come before us following a decision of Hearing Officer Betty Waxman in favor of Respondents. In a Decision dated September 27, 2000, the Hearing Officer dismissed the complaint following a public hearing. The Complainant then filed a timely Petition for Review. This Order does not constitute a final order of the Commission with respect to the sufficiency of the evidence because we have decided to remand the matter to the Hearing Officer for further findings.¹ For the following reason, we have concluded that additional proceedings are necessary in order for the Full Commission to conduct a full review as set forth in 804 CMR 1.23.²

¹ It is the duty of the Full Commission to review the record of proceedings before the Hearing Commissioner or Officer. M.G.L. c. 151B, § 5. The Hearing Commissioner’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.

² See in 804 CMR 1.23 (2) Review of Decisions of Hearing Officers - The Full Commission may review the final decision of a Hearing Officer sua sponte.....(a) The Commission may order oral argument, and/or order the parties or the General Counsel submit memoranda of law or fact. (b) The Commission shall, under such circumstances, take action as delineated at 804 CMR 1.23(1), or any other order it deems necessary in the interests of justice.

Specifically, we find that the Hearing Officer’s conclusion that one of 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 , constitutes an error of law.³ It is well-settled that the refusal to rent to a Section 8 recipient due to the cost of repairs as required by the health code of the Commonwealth is not a defense to a claim under c.151B, s.4(10).⁴ See Attorney General v. Brown, 400 Mass. 826 (1987); Whitford v. Ford, 13 MDLR 1001 (1991); Northcross v. Denietolis (Daher, J. Order of the Housing Court No 2-8-1-7-5); Blanks v. Gray (Abrashkin, J. Order of the Housing Court No LE-3001-S-87). That being said, however, the Hearing Officer made additional findings, which indicate that Respondents 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.”

As a result of the Hearing Officer’s erroneous conclusion regarding the legitimacy of one of Respondent’s purported reasons for refusing to rent to Complainant, the Hearing Officer did not make the necessary conclusions of law regarding causation. Therefore, we remand the case

³ The Hearing Officer reached the following specific legal conclusions in her decision:

“I conclude that Respondents did not discriminate against Complainant in refusing to rent their property to her.... When a Boston Housing Authority inspector examined the premises on December 29, 1997, they failed to pass inspection and required extensive and costly repairs in order to do so. At that point, the Respondent was forced to withdraw from the Section 8 Program due to his inability to satisfy the regulatory requirements. The fact that Respondent proceeded, over the next four months to make many of the repairs required by the inspector in no way detracts from the legitimacy of his assertion that he could not afford to satisfy the requirements of the Section 8 Program in December 1997... Given the lengthy history of the renovations and the Respondents financial struggles to pay for them, I conclude that the Respondents were motivated by financial not discriminatory concerns when they determined that they could not bring their property into Section 8 compliance.”

⁴ M.G.L. c.151B, s.4(10) provides in relevant part:
It shall be an unlawful practice: For any person furnishing...rental accommodations to discriminate against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, 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. (emphasis added).

to the Hearing Officer 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 Chief Justice for Administration and Management v. Massachusetts Commission Against Discrimination, 439 Mass. 729, 735 (2003); see also Wynn & Wynn v. Massachusetts Commission Against Discrimination, 431 Mass. 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.”)

ORDER

For the reasons set forth above, we hereby remand the matter for further proceedings before the Hearing Officer consistent with this order, which, as noted above, does **not** represent the final action of the Commission for purposes of M.G.L. c.30A.

SO ORDERED this 25th day of September, 2003.

Cynthia A. Tucker, Commissioner

Walter J. Sullivan, Jr., Commissioner