

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & DONNA DEROSA,  
Complainants

v.

DOCKET NO. 98-BPR-2899  
99-BPR-1939

WOOD RIDGE HOMES, INC. &  
BARKAN MANAGEMENT,  
Respondents

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Appearances:

William F. Green, Esquire, Commission Counsel for Complainant  
Catherine F. Downing, Esquire for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about September 28, 1998, Complainant Donna DeRosa filed a complaint with this Commission charging Respondents with discrimination in housing on the basis of her race. The Investigating Commissioner issued a lack of probable cause finding which was reversed on appeal. On July 21, 1999, Complainant filed a second complaint with this commission charging Respondents with retaliation against her for having engaged in the protected activity of filing the first complaint. The Investigating Commissioner issued a probable cause determination with respect to this second complaint. Attempts to conciliate these matters failed and the complaints were consolidated and certified for public hearing. A public hearing was held before me on May 31 and June 1, 2005. After careful consideration of the entire record and the post-

hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

## II. FINDINGS OF FACT

1. Complainant Donna DeRosa, a 57 year old African-American woman, has resided for the past 25 years in an apartment at 24 Fieldstone Court, located in the Wood Ridge Homes housing complex in North Andover, Massachusetts. Complainant has four children, all of whom have lived with her at various times throughout her tenancy at Fieldstone Court. (Tape 2, 5/31/05).

2. Respondent Wood Ridge Homes is a co-operative, government subsidized housing complex containing 230 units that was managed by Respondent Barkan Management Company at all times relevant to this matter. The complex is owned by Wood Ridge Homes, Inc., a cooperative whose residents own shares in the corporation that owns the development. In addition, the Massachusetts Housing Finance Agency (MHFA) finances the development's mortgage. Some of its residents, including Complainant, receive rental assistance from the U. S. Department of Housing and Urban Development (HUD). The monthly payments due from the residents are called "carrying charges" instead of rent. The monthly carrying charge of subsidized tenants is determined by their income and household composition. Deborah Larsen-Souza was property manager for Respondent Barkan at the time of the incidents complained of by Complainant. (Tape 5, 5/31/05)

3. MHFA and HUD regulations require Wood Ridge Homes tenants receiving rental subsidies to verify their income on an annual and interim basis in order to determine their level of assistance. In addition, residents of Wood Ridge Homes are required to complete annual certifications of income to determine the amount of their carrying charges.

4. Tenants must agree to provide access to their units for inspection and repairs. Complainant's unit has been inspected on at least a yearly basis, as required by the HUD regulations.

5. Complainant testified that Barkan subjected her to an inordinate number of inspections and recertifications, and initiated eviction proceedings against her after she filed a complaint of discrimination in housing. I do not credit this testimony.

6. On September 10, 1997 a maintenance man informed Complainant that her unit would have to be fumigated because of the presence of cockroaches in the vacant apartment next door. In addition, Complainant received a letter from Barkan stating that an exterminator would come on September 12<sup>th</sup>. Barkan refused Complainant's request to change the date because new tenants were moving into the vacant apartment on September 13<sup>th</sup>. As a result of Complainant's refusal to allow access to her apartment, Barkan filed a Housing Court complaint seeking an order requiring Complainant to allow

access to her apartment. A hearing on September 18, 1997 resulted in an agreement whereby Complainant would provide access to her unit. (Exh. R-11).

7. According to Complainant, Barkan did not require the fumigation of the unit on the other side of the vacant unit where a Caucasian woman resided. According to Complainant, Larsen-Souza tried to blame Complainant for the cockroaches because of the color of her skin. I do not credit this testimony.

8. Complainant testified that her unit was subjected to numerous random inspections over a seven month period after the extermination. Larsen-Souza testified that because of because of ongoing poor housekeeping issues, Complainant's unit was scheduled to be inspected on a monthly basis to "reassess the problem areas." (Exh. R-40). Complainant was notified in writing about this scheduling of inspections. I credit Larsen-Souza's testimony.

9. According to Complainant, she was subjected to more inspections than her white neighbors. Complainant claimed that sometimes maintenance workers entered her unit without ringing her bell. She claimed that on one occasion, while home alone, she came out of the shower and discovered a maintenance man in her unit checking the "glue boards" used to trap cockroaches. Complainant felt her home was her "slave quarters" because of all the inspections. (Tape 2, 5/31/05) While I credit Complainant's testimony that her apartment was subjected to frequent inspections, I find that the inspections were required to prevent re-infestation of cockroaches on account of poor housekeeping. I do not credit Complainant's testimony that a maintenance man entered her apartment when

she was in the shower. I do not credit Complainant's testimony that her apartment was subjected to frequent inspections because of her race.

10. Between December 1996 and August 1998, Barkan sent seven notices of inspection for housekeeping problems, four to Caucasian tenants and three to Hispanic tenants. (Exh. R-41)

11. Complainant claimed that Larsen-Souza did not like an African-American challenging her so Larsen-Souza manipulated her paperwork to appear incomplete (Tape 4, 5/31/05) in order to increase her rent to market rate so that Respondents could evict her. (Tape 4, 5/31/05). I do not credit her testimony.

12. Larsen-Souza testified credibly and in great detail concerning Respondents' responsibilities under HUD and MHFA regulations to re-certify residents. In summary, Respondent must perform annual re-certifications to verify the income and household composition of tenants like Complainant who receive a rental subsidy.

13. Larsen Souza testified that in addition to annual certifications, Respondent must also conduct interim certifications whenever a resident undergoes a change in income or household composition, as either would trigger a change in the amount of the tenant's rental subsidy. Although Barkan was usually notified by residents concerning changes in income or household composition (tape 6, 5/31/06, tape 1, 6/1/05), if Larsen-

Souza learned about such changes from other sources, she would notify the tenant in writing to come to the office to document any such changes. I credit her testimony

14. Larsen-Souza testified that on March 28, 1997, Complainant reported on her annual recertification form that she had no income. (Exh. R-22). HUD required Respondent to send letters to tenants who reported zero income inquiring how they were paying for their cable and other expenses. (Exhibit R-2) In accordance with its policy of requesting updated information from residents reporting zero income, on September 26, 1997, Respondents mailed Complainant a standard form requesting her to update her income status. (Exh. R-24). Respondent mailed 19 identical notices to other residents in accordance with this policy. (Exh. R-24) I credit Larsen-Souza's testimony.

15. Larsen-Souza testified that on or about November 5, 1997, Barkan learned that Complainant had failed to report monthly benefits from the Department of Transitional Assistance. In addition she failed to report that her son Sean was then living with her and did not report his income. Larsen-Souza notified Complainant in writing that it was aware of changes in her household composition and income and asked her to come to the office to complete forms verifying the information. (Exh. R-25).

16. On January 28, 1998, Complainant notified Barkan that she had obtained a new job. On March 2, 1998, she was terminated from that job. Larsen-Souza testified that each of these events required Complainant complete an additional interim

recertification, at a time when she had not yet completed either the original interim recertification or the annual certification process. I credit this testimony.

17. During the same time period, Complainant had failed to pay monthly carrying charges for the months of February and March 1998, which had increased due to her failure to recertify her income.

18. In March 1998 Respondents began eviction proceedings against Complainant for her failure to comply with her occupancy agreement and failure to pay carrying charges. The parties appeared at a hearing in the Housing Court on May 14, 1998, at which time Complainant disputed the amount of carrying charges she owed. The Housing Court judge instructed Complainant to go to Barkan's office the following day together with her sons, to complete the re-certification process(Tape 4, 5/31/05). Notwithstanding the judge's instructions, Complainant failed to complete the certification process.

19. The Housing Court then scheduled a mediation session on July 8, 1998 attended by Jim Paleologos, the court mediator, Complainant and Larsen-Souza. According to Larsen-Souza, at the time of the mediation Complainant accused her of engaging in trickery and inserting false statements into the documents. At this session the parties extended the deadline for submitting missing documents and continued the mediation session until July 31, 1998.

20. On July 31, 1998, Barkan attended the scheduled mediation session. However, Complainant called the Housing Court and stated she could not attend the mediation because she “felt faint”. Barkan agreed to re-schedule to the meeting to August 5, 1998 at 2:30 p.m. At 12:00 p.m. that day, Complainant called Respondent’s office and stated that she was in the hospital.

21. Barkan offered to meet Complainant at the court on August 12, 1998, however, Complainant failed to appear. As a result of Complainant’s failure to appear in court on August 12, 1998, Barkan proceeded with the eviction and obtained a judgment and execution. On September 8, 1998, the parties entered into an agreement for judgment whereby Complainant would pay off her arrearage over a one year period. At this time, Complainant submitted all of the documentation requested by Respondent in order to conduct a re-certification.

22. Over the following several months, Complainant failed to make payments as required by the agreement. As a result, Respondent brought the matter back to the Housing Court and again the parties negotiated a settlement. Ultimately the eviction was stayed and the parties entered into a payment agreement (Tape 4, 5; 5/31/05). (Exh. R-10)

23. Complainant testified that during one of the parties’ housing court sessions, she overheard Larsen-Souza tell the housing specialist, Jim Paleologos, that she did not like black people who sought special treatment. (Tape 4, 5/31/05) I do not credit this

testimony. Larsen-Souza denied making any such statement and I credit Larsen-Souza's testimony.

24. Complainant testified that Respondents attempted to evict her a second time in 1999 because of her failure to comply with the payment plan following the first eviction proceeding the previous year. On May 20, 1999 a hearing was held concerning the eviction. The hearing was continued to June 18, 1999 at which time the Housing Court judge assigned volunteer counsel to represent Complainant. At that time the parties entered into an amended agreement for judgment. (Exh. R-10) Complainant eventually completed a second payment plan and was not evicted.

25. Complainant filed her second complaint with this Commission on July 21, 1999. She believed that Respondent was retaliating against her by continuing to manipulate her paperwork in order to evict her. (Tape 5, 5/31/05)

26. Edward Paquette is the former Assistant Property Manager for Barkan. Paquette testified that Complainant was treated differently from Caucasian tenants at Wood Ridge. He testified that Larsen-Souza told him not to be nice to Complainant and that you could not believe a word she said (5/31/05 Tape 1-2). I do not credit his testimony.

27. Paquette testified that Larsen-Souza and her administrative assistant, Peggy Amico-Razzaboni caused Barkan maintenance workers to enter Complainant's unit with

microphones, allowing Larsen-Souza and Amico-Razzaboni to eavesdrop on Complainant's conversations. Paquette testified that Larsen-Souza and Amico-Razzaboni never spied on Caucasian tenants in this manner. While he testified that Complainant was singled out for more re-certifications, Paquette acknowledged that Complainant was not always cooperative with the re-certification process. I do not credit Paquette's testimony that Complainant was singled out for more re-certifications or that maintenance workers were told to eavesdrop on Complainant. Both Larsen-Souza and Amico-Razzaboni denied engaging in any such conduct. I credit their testimony.

28. Paquette testified that from January 1997 to February 1999, Larsen-Souza and Amico-Razzaboni constantly made racially derogatory remarks about African-Americans such as they cannot be trusted. I do not credit Paquette's testimony. Both Larsen-Souza and Amico-Razzaboni denied making any such remarks. I credit their testimony.

29. According to Peggy Amico-Razzaboni, Barkan's administrative assistant from 1995-2001, Paquette exhibited unusual behavior during his employment and "became more and more involved in making pieces of paper" to the extent that he brought in his own file cabinet to the office. Larsen-Souza testified that she terminated Paquette's employment on February 22, 1999 for poor job performance. According to the credible testimony of Larsen-Souza and Amico-Razzaboni, on his last day of work, Paquette threatened Larsen Souza and Amico-Razzaboni, and stated that he would "get them" and they would "be sorry". (Tape 6, 6/1/05) Further, after his termination Paquette

continued to make disparaging comments about Barkan. I find that Paquette's testimony concerning the actions and statements of Barkan employees was not credible and was motivated by a desire to seek revenge against Barkan for having terminated his employment. I credit the testimony of Amico-Razzaboni and Larsen-Souza regarding Paquette's threats of revenge.

30. Between January 1998 and February 1999, Respondent brought 26 eviction actions against its tenants, 19 against Caucasians, three against Hispanics and three against African-Americans. (Exh. R-35).

31. There was evidence that Barkan mistakenly billed Complainant for its attorney's fees in connection with the eviction proceeding in this matter. Barkan never collected these fees. I conclude that this billing was in error and was not motivated by retaliatory animus.

### III. CONCLUSIONS OF LAW

#### A. DISCRIMINATION

M.G.L. c. 151B, §4(6) prohibits discrimination on the basis of race and color in the terms, conditions and privileges of... “multiple dwelling or contiguously located housing accommodations.” Complainant, a member of a protected class by virtue of her race and color, has alleged that Respondent subjected her to an inordinate number of inspections and re-certifications and attempted to evict her because of her race and color.

The elements of a prima facie case of discrimination will vary in different cases depending upon the facts and circumstances of the alleged discrimination. Baker v. Collazo, 5 MDLR 1001, 1016 (1983); Roy v. O'Brien, 2 MDLR at 1265, n. 4 (1980).

The prima facie case in an eviction action is established by showing that the Complainant (a) is a member of a protected class; (b) meets the objective requirements of the tenancy; (c) if s/he does not meet such requirements, produces some evidence that other tenants not fulfilling these requirements are not being evicted; and (d) s/he is, or is in the process of being, evicted. Roberts v. Chan, 2 MDLR 1277, 1295 (1980). Green, et al v. Trepanier, 14 MDLR 1358 (1990)

I conclude that Complainant has failed to establish a prima facie case of race discrimination in housing. While Complainant has established her membership in a protected class, she has failed to establish the second prong of the prima facie case, that she was meeting the requirements of the tenancy. There was credible evidence that Complainant repeatedly failed to comply with the requirements of her tenancy regarding her income and household composition and produced no evidence whatsoever that she

was treated differently from tenants who were not in her protected class. Further, Respondents provided credible evidence that while Complainant received numerous notices regarding inspection of her apartment, as well as numerous requests to report changes in her living situation, the notices were all legitimate responses to Complainant's repeated failure to cooperate in the reporting of changes in her income and household composition. Furthermore, Respondent produced evidence that it sent similar notices to Caucasian and Hispanic residents.

While Complainant attempted to prove discriminatory animus through the testimony of Edward Paquette, and testified that she, herself, overheard Larsen-Souza make racist remarks, I found neither her nor Paquette's testimony to be credible. Paquette was terminated from his position at Barkan, and on his last day of work, according to the credible testimony of Larsen-Souza and Amico-Razzaboni, he threatened to seek revenge against them. I conclude that his desire to get back at them motivated him to testify on behalf of Complainant. Moreover, the credible testimony establishes that Complainant's failure to cooperate was the motivation for Respondents' actions.

#### B. RETALIATION

For purposes of a claim under G. L. c. 151B, s. 4 (4), a plaintiff has engaged in protected activity if "he has opposed any practices forbidden under this chapter or . . . has filed a complaint, testified or assisted in any proceeding under [G. L. c. 151B, s. 5]." Under s. 4 (4A), protected activity consists of "aid[ing] or encourag[ing] any other person in the exercise or enjoyment of" any right under G. L. c. 151B.

Complainant contends that the causal relationship between the filing of her complaint and the adverse actions taken can be inferred from the timing and sequence of events. However, "...the mere fact that one event followed another is not sufficient to make out a causal link." MacCormack v. Boston Edison Co., 423 Mass. 652, 662 n.11 (1996), citing Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996). That Respondents knew of a discrimination claim and thereafter took some adverse action against the complainant does not, by itself, establish causation. The sequence and timing of events in the present case do not support the inference of retaliation.

Complainant's problems at Wood Ridge began before she filed her original complaint on September 1998. Where, as here, her problems predate any knowledge that she has engaged in protected activity, it is not permissible to draw the inference that subsequent adverse actions, taken after the Respondent acquires such knowledge, are motivated by retaliation; Prader v. Leading Edge Prods., Inc., 39 Mass.App. Ct. 616, 617 618 (1996) (employee fired after receiving back pay award claimed retaliation; summary judgment for employer based on prior performance evaluation which, "although in general favorable to the plaintiff, stated that the plaintiff needed improvement" in various categories). Here, prior to the Respondent's awareness of Complainant's discrimination charge, there is undisputed evidence that Complainant had already failed to cooperate with Respondents regarding the recertification process. That evidence undercuts any inference that it was Complainant's discrimination complainant that caused the various adverse employment decisions of which she now complains. Mole v. University of Massachusetts, et al, 442 Mass. 582 (2004). Thus I conclude that Respondents did not engage in unlawful retaliation.

IV. ORDER

For the reasons stated above, the complaints in this matter are 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 19th day of December, 2005.

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JUDITH E. KAPLAN  
Hearing Officer