

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

Massachusetts Commission Against Discrimination and
Lalanya Anne Brun
Complainant

v.

Docket No. 98 BPR 1013

Management Realty Company/Arthur King
Respondent

APPEARANCES

Lisa J. Bernt, Esq.
Counsel for the Complainant

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 2, 1998, Lalanya A. Brun filed a Complaint with the Massachusetts Commission Against Discrimination against Management Realty Company/Arthur King,

alleging that she had been denied the rental of a dwelling and harassed by the Respondent on the basis of her sex (gender). On August 11, 1998, the Investigating Commissioner found probable cause to credit the allegations of the Complaint and on October 26, 1998, the matter was certified for public hearing. A public hearing was held before the undersigned-hearing officer on June 29, 2000. Respondent did not appear to defend this matter at the public hearing and was defaulted. Respondent's default was entered on the record pursuant to the Commission's rules of procedure, at 804 CMR 1.21(8) and the matter proceeded as a default hearing. Respondent was duly notified of the entry of default, and of its right to petition the Commission to vacate the entry of default, remove the consequences of default and reopen the case for good cause shown within ten days of receipt of the notice of entry of default. Respondent has not moved to vacate the default and has not contacted the Commission in any way with respect to this matter.

Having reviewed the record in this matter, and based upon all the credible evidence and the reasonable inferences drawn therefrom, I make the following findings of fact, conclusions of law, and order.

II. FINDINGS OF FACT

1. Complainant Lalanya Anne Brun ("Complainant"), a female, is currently serving in the U.S. Army and stationed at Fort Gordon, Georgia. She is an E4 specialist, a junior non-commissioned officer, which is a step above private.
2. Respondent Arthur King ("Respondent") doing business as Management Realty Company, has a last known address of 683 Washington Street, Dorchester, MA; Suite 1. He has also been known to have an address of 123 Lorna Road, Mattapan, MA. He was not present at this hearing.

3. In January 1998 Complainant was seeking an apartment close to the University of Massachusetts, Boston campus, where she attended evening courses towards a masters degree in counseling.
4. She was renting one room at 3 Beckett Street in North Quincy at the time. Complainant had a month-to-month tenancy and she viewed the situation as temporary, until she was able to locate an appropriate apartment. She had no written lease.
5. During January 1998, Complainant met a man named Prince Belin (“Belin”). They engaged in conversation and he asked where she lived. She said she was looking for a place to live. He told her his father had a business helping people find apartments. He said that his father would find her an apartment convenient to public transportation and close to her school. Belin told Complainant the location of his father’s business, the phone number, and his father’s name, Arthur King (“King”/”Respondent”). He also gave her a business card. (Exhibit 1)
6. Approximately one week after her conversation with Belin, Complainant called the number she had been given and reached Belin, rather than his father. She arranged to meet with the Respondent King at his office but when she went to the office, to fill out an application, King was not there. Belin was at the office and he paged his father. While she was waiting for Respondent, Belin handed Complainant a rental application to complete. Respondent arrived twenty minutes later. This was the first time Complainant met or spoke with him.
7. Complainant informed Respondent King that she wanted an apartment that was “livable and nice”, “not too expensive” and one that was close to public transportation to facilitate her travel to work and school since she didn’t have a vehicle. She advised him that she needed the apartment by February 1, and he indicated that the date would not pose a problem and that there were places available.

8. Complainant told Respondent that it was her first time looking for an apartment. He said that her application looked good, that he would verify her information, and they shook hands. She understood that he would be doing a background check and she was comfortable with the procedure.
9. Respondent mentioned needing a deposit that would show good faith, prior to him processing the application.
10. On the counter at Respondent's office, there was a stack of flyers. Complainant remembers receiving a flyer for Management Realty Co., (Exhibit 2) which described the company's services in managing and maintaining property for both property and business owners ¹.
11. The next time Complainant spoke with Respondent about the application was during a phone call she placed from her place of work while she was at the switchboard. This was on the afternoon of January 22nd. Respondent indicated that he owned an apartment complex and he had an apartment available and that she could move in February 1.
12. Respondent King asked Complainant for a deposit to hold the apartment. Complainant gave Belin a check in the amount of \$350 made payable to Prince Belin/Management Realty. (Exhibit 3 check shows it was cashed by Belin, on behalf of Management Realty, with his initials P.B. Belin gave Complainant a receipt numbered 135471. At that time, Complainant had not been shown the inside of any apartment. Complainant felt uneasy about giving the check to Belin and she asked him to sign the back of receipt # 135471. Belin dated the receipt

¹ The "flyer", essentially a piece of paper promoting the services of Management Realty Co. contains an office number, a pager number, the address (687 Washington Street) which was different from the actual address 683 Washington Street, and representations that the company would keep property clean, collect rent, and screen all clients.

January 22, 1997 though the transaction took place on January 22, 1998. (Exhibit 4)

13. Complainant testified that at first she was desperate to obtain an apartment by February 1, 1998 because her landlord had family from China who were to move into her room. Once she received confirmation from the Respondent that she could move into a new apartment by February 1, she spoke with her landlord who drew up a termination agreement.
14. Complainant testified that she wasn't concerned about the particular features of any apartment. Her primary focus was that it be accessible to her school and be affordable. She was told by King that her monthly rent would be around \$500 - \$550.
15. As time went on, Complainant did not hear from King and became increasingly anxious because her landlord's family would be returning from China requiring her to vacate her room. Her landlord informed her that she would not need to pay last month's rent because of a security deposit she had paid initially.
16. After she paid the deposit to Belin, Complainant was concerned about getting a key. As of February 1, 1998, Complainant had not received a key, nor had she seen an apartment. She obtained an extension on her arrangement with her landlord. When she contacted Respondent, she was informed that the current tenant had not vacated and that no key was available because the tenant had the keys.
17. Complainant was upset with this response and insisted on seeing an apartment. King showed her the outside of an apartment building which contained the unit he would rent to her. Complainant testified that the exterior looked livable and that the neighborhood looked okay to her. Respondent explained that there was no key

available as the apartment was being painted. He indicated that it would be ready for her to move into on February 15, 1998.

18. Pursuant to Respondent's representations, Complainant made arrangements with her landlord to stay for an additional half month. Her check #158, in the amount of \$135, represented half the month of February rent, and the telephone bill. She extended her month-to-month lease to February 15, 1998. Her check to her landlord, #159, dated February 21, 1998, represented the remainder of February rent as well as the telephone bill.
19. Respondent contacted Complainant and said he had a better apartment for her. He told her about a two family house that was special and boasted that he wouldn't let just anybody live there. Respondent explained the family who owned it took great pride in the house. The rent for the two family house was \$650. Although the price was higher than the \$500 – \$550 range she had discussed initially with the Respondent, Complainant was anxious to secure new housing. She asked about extras, such as hardwood floors and air conditioning. King told her: "Anything you want- all you have to do is cooperate with Mr. King."
20. Arrangements were made to view the apartment on February 15, 1998. Since the two family house was in close proximity to Respondent's business, the parties met there. When Complainant arrived at the office, she observed that King had been drinking liquor. Complainant testified that she wore a long skirt and suit jacket because she wanted to make a good impression on the landlord. King and Complainant drove together to the two family house and waited outside for approximately ten minutes. King then told Complainant that the landlord was not home. After looking at the front of the house, Complainant's primary concern was whether the apartment would be ready on or before March 1, 1998. King assured her it would be available if Complainant paid the first month's rent. King reported that since he was a good friend of the owner, there was no need for Complainant to meet him. Complainant asked for keys. King said he could obtain keys for her

if she paid the first month's rent. Complainant gave King \$650. in cash. (Exhibit 8, receipt # 135492 dated 2/15/98).

21. Complainant and King then returned to the realty office where, according to Complainant, King said, "I can help you out. Anything you want, air conditioning, anything, if you stop running from me and stop making me chase you around." Complainant replied, "I don't know." King then showed her pictures of other women stating, "These women are well taken care of. I got Tina a brand new washer/dryer." At that point, the Complainant was uncomfortable and felt "sickened" by King's suggestions. Complainant testified that he was old enough to be her father. She had seen his wife and knew his son was approximately her age. I credit Complainant's testimony as to her reaction and I believe that King's statements caused her distress.
22. This conversation took place in the back of King's realty office. After his statements regarding how he took care of other women, Complainant moved to the front of the office. She tried to bring the conversation back to the apartment and again asked when she would receive the keys to the apartment. Complainant testified that she felt she was "really in a bind" as she had paid him money. I credit Complainant's testimony that this was a very stressful situation for her.
23. Believing that King was intoxicated, Complainant tried to leave the office. When she walked past him, he grabbed her hips and pulled her onto his lap. She testified that she hit his hands to get off him, yelled, "What is wrong with you?" and ran outside. She used her cell phone to call a cab. She spoke to the cab driver about the incident and returned to her apartment very distressed. I credit Complainant's testimony about this incident.
24. Complainant testified that as a result of the incident in King's office, she felt "so taken and just so small". She stated that the incident made her feel as though she was dirty. I credit this testimony.

25. Complainant also testified that she had worked hard to go to college and to make something of herself. She said she wanted to be looked at as a person and not like a woman who had to use her body to get somewhere. Complainant testified that King had diminished all that she had worked for and that she felt she was right back where she had started, and began questioning what she was doing with her life.
26. Complainant told her mother about the incident and she went to live with her mother. Following the incident of February 15, 1998, Complainant did not return to Respondent's office.
27. Sometime between February 15, and mid March of 1998, Complainant had a telephone conversation with King. She testified that she thought she might get the keys to the apartment. During that conversation, she asked King, "So when am I going to get the keys?" He answered, "So when are you going to take me out to dinner? Let's discuss this at some other time. I'll call you back."
28. Complainant continued to contact King by paging him and asking him again about apartments. She testified that his tone on the phone was suggestive. When Complainant again asked about keys for the two family house, King said, "I can get you a key and we can go look at a room." When Complainant responded, "What room? I thought you said that apartment at the two family house was still available," he stated, "I'm talking about a hotel room:"
29. Complainant testified that during another telephone conversation with King, he whispered, "When are you going to let me fuck you?" Complainant asked, "What did you just say?" Respondent replied, "Nothing." I credit Complainant's testimony regarding the substance of additional telephone conversations with the Respondent.

30. Since she had not secured a new apartment, Complainant paid her landlord rent for the month of March, on March 1, 1998.
31. Complainant believed that her landlord was a little miffed regarding the termination of her tenancy and the continual changes in her departure date.
32. At the beginning of March, Complainant began looking for apartments with other management companies and landlords. She was immediately shown several apartments.
33. In approximately mid-March 1998, Complainant found an apartment, with a rental price of \$850 per month. She was required to pay rent for the first month, the last month and a one-month security deposit. The location was 145 Willard Street in Quincy. Complainant called the Respondent, told him she had obtained an apartment and that she wanted her money back. Complainant testified that Respondent said he had been working for her trying to get her an apartment.
34. On or about March 15, 1998, King arrived at her landlord's house in a moving van. In response to Complainant's demands for her money, he said there would be no problem and that he needed to "put in" for it. Complainant questioned what Respondent was talking about. Complainant told Respondent that she had given him the money promptly when he had asked for it, and that he should now be returning the money promptly upon her request. The Respondent replied, "The only way you will get your money back is if you go by my rules. Are you ready to go to a room with me? The only way you're gonna get your money back is if you let me fuck you. I have a permit for a gun. I don't think you know who you're messing with. I'm Mr. King. I'm King Arthur. I have the power to ruin your name. People have sued me. They always lose. I have a good lawyer; the same one for over ten years."

35. Complainant reported Respondent's threats to the police. A police detective came to her place of work, the Cambridge School Department. He gave her a file number as well as the name of the detective who would be working on her case. Complainant wrote the detective's name and number on the back of the Respondent's business card. (Exhibit # 1). Complainant called the Better Business Bureau as well as this Commission. She sent a letter to the Respondent, demanding her money. This letter was sent by certified mail to 683 Washington Street and was postmarked March 19, 1998. The correspondence was returned to the Complainant unclaimed. There were notations on the envelope showing three attempts at delivery.
36. Three criminal charges were entered against the Respondent including larceny over \$250 under false pretenses. Although a pre-trial was scheduled for April 1, 1998, at Cambridge District Court, the matter was not heard by the court on that date.
37. Complainant took April 1st and 2nd off from work to go to court and to move into her new apartment at 145 Willard Street. She lived there for four months from April through July of 1998.
38. The rent at Willard Street was difficult for Complainant to manage on her own and during June and July, her cousin moved in with her to help with the rent. Complainant then moved back and forth to her aunt's home and to her mother's home.
39. Complainant lost her job with the Cambridge School Department. She was told that the school department needed someone more stable and that she had been very emotional at work and had excessive absenteeism. Complainant encountered difficulties with paying her credit cards and was subject to late fees. She also bounced a check in the amount of \$50.00 and was penalized \$20.00 by her bank.

Complainant attributes all these problems to King's conduct towards her, including his retention of her \$1,000 payment.

40. Complainant testified that that the actions of the Respondent had "messed with her." She testified that she couldn't concentrate on going to school, stating, "the man had a whole lot more power over me. I lost a lot of my ground." I generally credit Complainant's testimony as to the effect of Respondent's actions upon her.
41. The criminal matter in court continued for one year. Complainant didn't see the Respondent again until May or June of 1999. At that time, the judge presiding in the Cambridge District Court asked the Respondent about his name and it was determined that Arthur King was not the Respondent's legal name and that he had several aliases. His legal name, as recorded by the court, is McArthur Belin. He was found guilty of larceny over \$250, guilty of a threat to commit a crime (threatening to shoot the Complainant) and guilty of proposing sexual conduct for a fee. Respondent was ordered to pay the money he owed Complainant by payment through the court. Complainant did receive compensation in the amount of \$1,100. The Respondent paid on the date and time required. The figure consisted of \$1000, which represented the deposit paid by the Complainant and an additional \$100, which represented interest, since the Respondent had held Complainant's money for one year.

III. CONCLUSIONS OF LAW

M.G.L. c. 151B, section 4, paragraph 6 prohibits, inter alia, discrimination on the basis of sex in the terms, conditions or privileges of the rental of housing in a multiple dwelling.

Sexual harassment of a tenant or prospective tenant by an owner or real estate broker constitutes sex discrimination in the terms, conditions and privileges of housing in violation of M.G.L. Chapter 151B, Section 4. The present case involves a claim of sexual

harassment brought by a prospective tenant against a managing agent and/or licensed real estate broker.

Sexual harassment is defined in M.G.L. c. 151B § 1(18) as “sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment. Discrimination on the basis of sex shall include, but not be limited to, sexual harassment.” The form of harassment defined in subpart (a) in the statute is known as quid pro quo harassment. Edouard v. Kozubal , 24 MDLR 80 (2002). These proscriptions have been held to apply to housing cases. Gnerre v. Massachusetts Commission Against Discrimination, 402 Mass. 502 (1988).

To establish a prima facie case of discrimination by quid pro quo harassment, Complainant must demonstrate that a) she is a member of a protected class; b) she was subject to unwelcome sexual conduct; c) the tangible terms or conditions of her situation adversely changed; and d) the change was causally connected to her rejection of the sexual advances. See Edouard, supra, Socarides v. Camp Edwards Troop Welfare Council. Inc., 21 MDLR 173 (1999); Hinojosa v. Durkee, 19 MDLR, 14, 16 (1997).

I find that the Complainant has established a prima facie case of quid pro quo sexual harassment in housing. Complainant is a member of a protected class on the basis of her sex/gender. Complainant has demonstrated that Respondent conditioned his services of providing Complainant with an apartment upon her furnishing him with sexual favors. Respondent was a licensed real estate broker or managing agent who held

himself out as someone who would secure housing for Complainant and took money from her for that purpose. The Respondent harassed the Complainant by repeatedly making unsolicited requests for sexual favors in return for securing her housing. (Findings of Fact #27, 28, and 29). Complainant's claims were quite consistent. She produced evidence in the form of her own sincere and credible testimony and supporting documents including Respondent's business card, Respondent's business flyer, rental receipts, and proof of the criminal action. Complainant has proven quid pro quo sexual discrimination by a licensed real estate broker or managing agent. Complainant testified credibly that the Respondent made unwanted sexual advances toward her, sexually assaulted her (Finding of Fact #23), and conditioned the rental of a dwelling on her provision of sexual favors (Finding of Fact #34). When Complainant asked Respondent to return her money, he refused to do so, telling her that he would return her money only if she had sexual relations with him. Complainant rejected his advances and communicated that Respondent's conduct was unwelcome by refusing his solicitation.

I found Complainant to be forthright and candid. Her testimony was consistent and supported by documentation. Her claims were unrebutted as the Respondent did not appear at the hearing and was defaulted. Therefore there is no evidence to refute any element of Complainant's prima facie case. Although the Respondent defaulted, the Complainant must still establish her prima facie case in order to prevail. Locke v. Plakas, 15 MDLR 1001 (1993). I conclude that Complainant did establish a prima facie case of sexual harassment in housing. For the above reasons, I conclude that Respondent has engaged in unlawful discrimination on the basis of sex, in violation of M.G.L. c. 151B section 4, paragraph 6.

IV. DAMAGES

After a finding of unlawful discrimination, the Commission is authorized to award compensation for damages and to order such affirmative relief as is appropriate including compensation for any out of pocket expenses incurred and damages for emotional distress. The Commission shall order Respondent to cease and desist from such unlawful practice, may assess a civil penalty against Respondent, and may award Complainant damages, including compensation for any out-of-pocket expenses incurred and any emotional distress Complainant suffered as a result of Respondents' discriminatory actions. M.G.L. c. 151B, sec. 5, pars 2 and 4; Love v. Boston Housing Authority, 18 MDLR 158 (1996), citing Bournewood Hospital v. MCAD, 371 Mass. 303, 358 (1970) Collegetown Division of Interco, Inc. v. MCAD, 400 Mass. 156 (1987).

A. Emotional Distress

Complainant has presented compelling testimony as to the emotional distress she experienced, and continues to experience as a result of Respondent's unlawful discrimination. Haynes, 18 MDLR 101 (1996).

I credit all of Complainant's testimony. She testified credibly that the Respondent's sexual overtures had made her feel as though she was dirty (Finding of Fact# 24). His harassment continued in phone conversations where he said, "When are you going to let me fuck you?"(Finding of Fact #29) and this egregious conduct brought her to tears. Complainant testified that she felt "so taken and just so small" (Finding of Fact #24). Complainant attributed her inability to concentrate on her schooling to Respondent's actions, stating that Respondent had "a whole lot more power" over her and caused her to lose her ground. (Finding of Fact #40) He exerted this power and control in a threatening manner when he told her he had a permit for a gun and stated, "I don't think you know who you're messing with". (Finding of Fact #34) He told her he had the power to ruin her name. His actions caused her to suffer a dramatic decrease in self-esteem. Because Complainant felt so poorly about herself, she began to question what she was doing with her life. Complainant was emotional at her workplace and, as a result of her

emotional outbursts at work, she lost her position with the Cambridge School Department. As Complainant noted, the Respondent was old enough to be her father (Finding of Fact #21). I find it to be particularly egregious that the Respondent took advantage of Complainant's youth and naivety.

The Complainant testified in a compelling manner as to her emotional distress. No proof of physical injury or psychiatric consultation is necessary to sustain an award for emotional distress. See Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997) quoting Buckley Nursing Home Inc. v. MCAD, 20 Mass. App. Ct. 172, 182 (1985) (a finding of discrimination, by itself, permits an inference of emotional distress as a normal adjunct of such discrimination). In this case, Complainant gave Respondent a substantial sum of money (\$1,000.) and she became fearful that she would not have an appropriate place to live. This mental upset caused Complainant to make major changes in her life with regard to school and she decided to enlist in military service. These dramatic changes attest to the detrimental direct impact that Respondent's harassment had on Complainant's life. Edouard, supra.

I conclude that Complainant is entitled to \$60,000.00 in emotional distress damages based on the foregoing evidence.

B. Out of Pocket Damages

Complainant suffered out of pocket damages, in the amount of \$1,000. She did, however, receive payment from the Respondent through the Suffolk Superior Court. I conclude that Complainant is not due additional out of pocket damages.

The Complainant's primary financial concern was the affect upon her credit as a result of having to pay more rent than she had anticipated. Her monthly rent for the four months she lived in Quincy was \$850 per month as opposed to the \$500 she had planned to pay. However, even if the Complainant had secured the apartment located in the two family house shown to her by the Respondent, the rent would have been \$650 per month. (Finding of Fact #19) I find the fact that she was required to pay three months rent in

Quincy (first month, last month, and a security deposit) is usual in the normal course of renting an apartment. Complainant testified that during this period of time, she bounced a small check and was subject to a penalty. She had difficulty paying her credit cards and was subject to late fees. (Finding of Fact #37). At the time of the hearing, Complainant had recently graduated from her job training in the military and her new position required special clearance. Due to her outstanding bills and poor credit, she testified that she could not obtain the clearance nor move up to a new position. In addition, she testified that she was not eligible to receive the \$8,000. sign up bonus form the military, also because she cannot obtain clearance. She attributed all these difficulties with her credit to the Respondent. However, I do not conclude that all of Complainant's credit problems are attributable to Respondent's actions and I find such claim to be too speculative. Therefore I decline to order damages resulting from Complainant's loss of a good credit rating.

C. Civil Penalty

I further find that the Respondent's conduct towards Complainant was so egregious as to merit a civil penalty under M.G.L. sec. 5, in the amount of \$10,000.

V. ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority granted to the Commission under M.G.L. c.151B, section 5, it is hereby ordered that:

1. Respondent shall cease and desist from engaging in any discriminatory conduct in violation of M.G.L. c. 151B in connection with the rental of any property.
2. The Respondent shall pay Complainant the sum of \$60,000. in damages for emotional distress suffered as a result of the Respondent's unlawful actions. Interest on this damage award accrues at the statutory rate of 12% per annum from the date the complaint was filed until such date judgment is made or this

order is reduced to a court judgment and post-judgment interest begins to accrue. Respondent shall pay this sum to Complainant within 60 days of its receipt of this decision.

3. The Respondent shall pay a civil penalty pursuant to M.G.L. c. 151B Section 5, in the amount of \$10,000. payable to the Commonwealth of Massachusetts, payable within 60 days of its receipt of this decision.
4. The parties shall promptly notify the Clerk of the Commission when Respondent makes the ordered payment.

Any party aggrieved by this decision may file a Notice of Appeal to the Full Commission within ten (10) days and a Petition for Review within thirty (30) days.

SO ORDERED THIS 29th day of January, 2003.

HELENE HORN FIGMAN

Hearing Officer