

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & MARY GARDNER,  
Complainants

v.

DOCKET NO. 03-SPR-02494

JAROSLAW PIANKA,  
Respondent

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Appearances:

Sergio Carvajal, Esquire and Jonathan L. Mannina, Esquire for Complainant

DECISION OF THE HEARING OFFICER

On or about October 2, 2003, Complainant Mary Gardner filed a complaint with this Commission charging Respondent Jaroslaw Pianka with discrimination in housing on the basis of children and lead paint, in violation of M.G.L.c.151B§4, ¶7B, and M.G.L.c.111§199A. The Investigating Commissioner issued a probable cause determination. Respondent did not participate at all in the investigative process. A public hearing was held before me on September 22, 2006 in Greenfield, Massachusetts. Respondent failed to appear at the hearing, Respondent's default was entered into the record and the hearing proceeded as a default hearing, pursuant to 804 CMR 1.21(8). Respondent was duly notified of his default and failed to seek removal of the default or otherwise respond. After considering the entire record of the proceedings, I make the following findings of fact, conclusions of law, and order.

## I. FINDINGS OF FACT

1. Complainant Mary Gardner currently resides in Greenfield, Massachusetts with her three children.

2. Respondent Jaroslaw Pianka is the owner of property located at 8 Perry Avenue in Worcester, Massachusetts. (Ex.C-3)

3. In June 2003, Complainant and her boyfriend, Richard Holland, along with their 9-month-old son and two-year-old daughter, moved into an apartment on Durante Street, in Worcester, Massachusetts with Holland's sister, Jessica, Jessica's children and Jessica's boyfriend. Complainant, Holland and their children slept in one room, sharing a large futon mattress. Complainant stated that this was a poor living situation because of the crowded conditions. She stated that her goal was to have an affordable, two-bedroom apartment in a good neighborhood. From 2000 to 2003, immediately prior to moving to Durante Street, Complainant and Holland lived in a nice four-bedroom apartment on Forest Hill Road in Worcester. This dwelling was owned by Holland and his Aunt Angelina and the rent was \$585.00 per month. Complainant and Holland moved when Angelina sold the house in 2003.

4. In June 2003, the Durante Street landlord informed Holland's sister that Complainant's family would have to move because there were too many people in the apartment. Complainant testified that, at the time, her family's sole source of income was Holland's earnings of \$200-\$250 per week from his jobs at Huffy and at Lowe's. Complainant and Holland began searching for a two-bedroom apartment in the range of \$600-\$700 per month in a good neighborhood in Worcester. However, most apartments

in their price range were located in neighborhoods where she did not want to raise her children.

5. Complainant testified that on or about June 3, 2003, she saw an advertisement in the Worcester Telegram & Gazette for a two-bedroom apartment on Perry Avenue in Worcester, Massachusetts for \$700.00 per month. The advertisement stated to call Jerry at 508-987-1359. (Ex. C-2) Complainant called the telephone number listed in the advertisement, but no one answered. Shortly thereafter, Respondent Jaroslaw Pianka returned her call and asked why she had called. Complainant told Respondent that she was calling about the advertised apartment and informed him that she would be living there with her boyfriend and their two children. Respondent asked her the ages of her children and when she told him that her daughter was two years old and her son was nine months old, Respondent stated that he could not rent to her because the apartment contained lead and would be dangerous to children. Complainant then asked Respondent, "So you won't rent to me because of lead?" He responded "yes." I credit her testimony.

6. Complainant testified that she would have taken the apartment advertised by Respondent because it was in her price range, in a good neighborhood and she had no other options. Complainant testified that she was very upset, angry and depressed, and felt as though Respondent was judging her because she had children. She did not know where to turn and worried about becoming homeless, and about the stability of her family. Complainant testified that following Respondent's rejection of her as a prospective tenant, she argued with Holland and had insomnia every night for quite a while, as they were crammed into one room at Durante Street. She worried that she had no place for her children to live.

7. In July 2003, after the Durante Street landlord ordered them to leave, Complainant, Holland and their children moved to the Regency Hotel in Worcester where they lived in one room with two beds. Complainant testified that she was unhappy with this arrangement because “they could not call it home” and nearly all their income went to paying the hotel. She stated that she and Holland fought constantly, mainly because they did not have an apartment of their own.

8. In August 2003, because they had no place to go, Complainant, Holland and their children moved to Complainant’s home town of Greenfield, MA where they lived with her mother, her mother’s boyfriend and his two children. Complainant’s family again slept in one room. Complainant testified that although she liked being near her mother, she did not get along with her mother’s boyfriend’s sons and left that living situation in January 2004. She still considered having her own place really important. During this time period she applied for public housing in Greenfield and searched the newspapers for affordable apartments.

9. In January 2004, Complainant and her family moved in with friends in Greenfield, sleeping again in one bedroom, sharing a kitchen and helping out with food and utility bills. Complainant moved out of this house because it was deemed uninhabitable and was later sold. Complainant’s third child, Ross Holland, was born in February 2004 while Complainant was living with her friends.

10. In April 2004 Complainant and her three children moved to 71 Washington Street, Greenfield with friends, where she shared one bedroom with her children. In April 2000 she and Holland were no longer together and Holland did not move to the

Washington Street location with them. According to Complainant, Holland left because he no longer wanted to live with others and wanted them to have a place of their own.

11. Complainant lived on Washington Street until September 30, 2004. Upon learning that the apartment contained lead, she moved into a shelter with her three children where they shared one huge room and had their own beds. Although Complainant liked the people at the shelter, its rules prohibited behavior that was difficult for children to curtail, such as running and making loud noise. In addition, residents had restrictive curfews; they had to be in the house by 7:00 p.m. and in bed by 8:00 p.m. and could only use the kitchen at certain times. Complainant's family lived in the shelter until January 5, 2005.

12. Complainant testified that workers at the shelter helped her secure a subsidized apartment at Leyden Woods, in Greenfield, where she and her children have lived since January 5, 2005. Complainant travels around Greenfield by bus or gets rides with her mother. When living in Worcester, Complainant could walk more places and did not have to rely on buses or getting rides.

13. Complainant testified that her children do not see their father very often because he returned to Worcester, nor do they see other relatives who also live in Worcester.

14. Complainant cried as she testified that if she had been allowed to rent Respondent's apartment she believed she would still be with her boyfriend and would be happy.

15. I credit Complainant's testimony in its entirety.

16. Complainant submitted affidavits of three fair housing testers from the Housing Discrimination Project in Holyoke, Massachusetts. Each tester called the number listed in the rental advertisement and spoke to Respondent around the time Complainant attempted to rent the apartment on Perry Street. (Ex. C-4)

17. Tester Sally Roy called the number listed in Respondent's advertisement and spoke to Respondent on June 5, 2003, telling him she was looking of an apartment for herself, her husband and their two grandchildren, age 1 ½ and 4. Respondent told her that he could not rent to her because the unit contained lead paint. (Ex. C-4)

18. Tester Susan Baines spoke to Respondent on June 8, 2003, telling him that she, her husband and their two children age 9 and 11 would be living in the apartment. She asked to see the apartment and he told her that he couldn't rent to her because the apartment contained lead paint. (Ex.C-4)

19. On July 3, 2003 Tester Susan Heath spoke to Respondent. She told him she would be living in the apartment by herself. He told her she should have called earlier because it was rented. She asked him if he had other properties. He called her back on July 4, 2003 and told her he had rented the apartment but his mother had an apartment on the same street and to call him if she was interested in seeing that apartment. (Ex.C-4)

### III. CONCLUSIONS OF LAW

M.G.L.c.151B, §4(11) makes it unlawful for "...the owner...of publicly assisted or multiple dwelling or contiguously located housing accommodations or other covered housing accommodations... to refuse to rent or lease or sell or otherwise to deny to or withhold from any person such accommodations because such person has a child or

children who shall occupy the premises with such person...” The presence of lead paint in a dwelling unit does not constitute a defense to a charge of discrimination on the basis of children. G.L. c. 111, §199A; Canady v. Shillingford, 23 MDLR 305 (2001).

In order to establish a prima facie case of housing discrimination, Complainant must establish that: (1) rental housing was available; (2) she applied for the housing; (3) she intended to occupy this housing with her children and; (4) her application was rejected because she intended to occupy this housing with her children. Jones v. Bass River Rentals, 21 MDLR 210,211(1999). Complainant has established a prima facie case of discrimination based on her having children. She testified credibly that Respondent questioned her about her children’s ages and told her he would not rent the apartment to her because of her young children as the apartment contained lead paint. In addition, Complainant submitted affidavits from three fair housing testers with the Housing Discrimination Project in Holyoke, Massachusetts, who called Respondent inquiring about the apartment in question. The two testers who told Respondent they had children were told that he could not rent to them because the apartment contained lead paint. The tester who said she would be renting by herself was told the apartment was rented but to call back and he would show her another apartment. For the reasons stated above, I conclude that Respondent refused to rent to Complainant on account of her children and the existence of lead paint, and engaged in unlawful housing discrimination in violation of M.G.L.c.151B§4(¶7B) and M.G.L.c.111§199A.

#### IV. REMEDY

The Commission is authorized to award damages for emotional distress resulting from unlawful discrimination. Stonehill College v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549 (2004); Bournewood Hosp., Inc. v. Massachusetts Comm'n Against Discrimination, 371 Mass. 303 (1976); Buckley Nursing Home, Inc. v. Massachusetts Comm'n Against Discrimination, 20 Mass. App. Ct. 172 (1985). Such emotional distress damages should be fair and reasonable, and proportionate to the distress suffered. Stonehill, supra, at 576. Some of the factors to be considered are; the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has suffered and reasonably expects to suffer and whether the complainant has attempted to mitigate the harm. Id. The Complainant must show a sufficient causal connection between the Respondent's unlawful act and the Complainant's emotional distress. Id.

Complainant testified convincingly about the emotional distress she suffered as a direct result of having been rejected as a tenant by Respondent. Complainant recounted her experience of continuing homelessness, where she lived in a series of crowded apartments, shelters and hotels, in one room together with her boyfriend and children. She argued with her boyfriend and spent sleepless nights worrying about where she would next be living. She wept as she testified about her belief that she would still be together with her boyfriend if she had not been rejected by Respondent. She moved several times within the space of two years with her young children in tow. This created a difficult situation for Complainant and her young family. I conclude that the sum of \$10,000.00 is appropriate to compensate Complainant for her emotional distress.

M.G.L.c.151B§5 states, in part, “if, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against the respondent: (a) in an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice.” Having found that Respondent has engaged in a discriminatory practice, and has failed to participate in any proceedings before this Commission, I conclude that a civil penalty in the amount of \$5,000.00 is warranted.

#### V. ORDER

For the reasons stated above, Respondent is hereby ORDERED to:

1. cease and desist from refusing to rent to families with young children in the future.
2. pay to Complainant Mary Gardner the sum of \$10,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
3. pay to the Commonwealth of Massachusetts the sum of \$5,000.00 as a civil penalty.

Payment shall be made within 60 days of receipt of this decision.

The parties shall notify the Clerk of the Commission as soon as payment has been made. If Respondents fails to comply with the terms of this Order within the time period allotted, please notify the Clerk of the Commission.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this 10th day of October 2006.

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JUDITH E. KAPLAN,  
Hearing Officer