

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
REYNARD WRIGHT,  
Complainants

v.

Docket Nos. 02-BPR-00462

MICHAEL'S REALTY and JAMES  
McNULTY,  
Respondents

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND  
ORDER OF THE HEARING OFFICER**

Appearances: Maricia Woodham, Esq., for Complainant  
Jordan Shapiro, Esq., for Respondents<sup>1</sup>

**I. PROCEDURAL HISTORY**

On February 22, 2002, Complainant Reynard Wright filed a complaint with the Massachusetts Commission Against Discrimination (the "Commission"), against Respondents Michael's Realty and James M. McNulty claiming that they discriminated against him on the basis of race, color, familial status, and receipt of public assistance with respect to the rental of a housing accommodation in violation of M.G.L. c. 151B, §§ 4(6), (10), and (11).<sup>2</sup>

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<sup>1</sup> James McNulty appeared *pro se* at the Public Hearing on behalf of both Respondents. Attorney Shapiro submitted the post-hearing submissions on behalf of both Respondents.

<sup>2</sup> The initial complaint also named Janis McNulty and Patricia Fasanelli as Respondents. The Commission dismissed the claim against Janis McNulty after the parties stipulated that no such person existed. The Commission also dismissed the claim against Patricia Fasanelli because she was in poor health and had filed for bankruptcy. In addition, Wright filed a separate claim against the owner of the subject property, William Shields, and that matter settled prior to a public hearing.

On August 28, 2002, the Commission found probable cause to credit Wright's allegations. On July 25, 2003, the Commission certified the case for Public Hearing. On December 19, 2003, a Public Hearing was held before me in Boston, MA. In deciding this matter, I have considered the entire record, including the testimony and exhibits introduced at the Public Hearing, and the stipulations of the parties. I have likewise considered the Proposed Findings of Fact and Conclusions of Law submitted by the parties after the Public Hearing. To the extent that the proposed findings and conclusions are in accord with the findings herein, they are accepted; to the extent that they are not, they are rejected. Certain proposed findings have been omitted as not relevant or necessary to a proper determination of the material issues presented.

II. **FINDINGS OF FACT**

1. Complainant, Reynard Wright is an African-American male who currently resides in Woburn, MA.
2. Respondent, Michael's Realty, Inc. is a corporation that operates a rental agency located at 50 Main Street, Woburn, MA. Respondent James McNulty is the owner of Michael's Realty and has been a real estate broker for thirty (30) years.
3. In or about September 2001, Wright contacted Respondents to assist him in locating an apartment in Woburn for himself and his minor son. Wright testified that he spoke with Patricia Fasanelli, who represented herself as McNulty's associate. On September 5, 2001, McNulty showed Wright a two-

bedroom townhouse located at 27-0 Arlington Road, # 3, Woburn, MA. McNulty informed Wright that the rent of the unit was \$1,300 per month. McNulty testified that he was acting as the real estate agent for William Shields, the owner of the property. He further claimed that he had served as an agent for Shields for roughly 12-15 years.

4. After seeing the apartment, Wright expressed to McNulty that he was interested in renting the unit. McNulty readily acknowledged that Wright informed him that he had a Section 8 voucher and his minor son would be living with him in the apartment. Subsequently, Respondents prepared the rental application, which expressly stated at the top of the document "SUBJECT TO OWNER'S APPROVAL." The document further indicated that the apartment would be rented by two occupants and only one of the occupants would be an adult. McNulty signed the rental application on the line reserved for the "Rental Agent." Wright then wrote McNulty a check for \$2,600, representing the realtor's fee and the first month's rent. According to Wright, McNulty told him he could move into the unit on October 1, 2001 and further stated, "You're all set." McNulty testified that he subsequently spoke to Shields and informed him that he had a qualified tenant "who was subsidized." McNulty claimed that in response, Shields stated, "Fine." McNulty claimed that he had previously rented many units to tenants who received rental assistance, however, he had never previously proposed or submitted any prospective tenants to Shields that received rental subsidies. McNulty cashed Wright's check on September 7, 2001. I credit McNulty's testimony.

5. McNulty's office then prepared the standard Section 8 lease forms and sent the documents to the Woburn Housing Authority for approval. He also arranged for an inspection of the property by the Woburn Housing Authority. On September 24, 2001, the Woburn Housing Authority inspected the rental unit and approved it for tenancy by Wright. McNulty testified that both Fasanelli and Shields were present in the unit during the housing inspection. McNulty claimed that he did not believe Shields raised any concern during the inspection about Wright's receipt of rental assistance. I credit McNulty's testimony.

6. McNulty then assisted Wright in getting his then fourteen (14) year old son enrolled in the Woburn Public Schools prior to October 1. Specifically, McNulty signed a hand-written note on "Michael's Realty" stationary that stated, "Reynard Wight will be obtaining a lease for an apartment at 270 Arlington Road, Woburn, MA."

7. Wright testified that in preparation for his move to Woburn, he gave his current landlord notice that he would be vacating his apartment in Somerville. He also arranged for the transfer of his son's educational records to the Woburn Public Schools and his son began attending Woburn High School prior to October 1.

8. McNulty testified that Fasanelli picked up the lease documents from the Woburn Housing and brought them to Shields for execution. At this point, everything apparently appeared in order. However, after Fasanelli presented Shields with the lease, he refused to sign it. McNulty testified that shortly

thereafter, Shields told him that Wright did not make enough money to afford the apartment. In response, McNulty claimed he told Shields that Wright “is subsidized” and therefore makes more than enough money to afford the property. McNulty testified that Shields then said, “I don’t want anybody that has to be subsidized.” McNulty stated that he then advised Shields that he could not discriminate against a prospective tenant because he received Section 8 assistance. McNulty claimed that Shields never mentioned anything about Wright’s race and he believed that Wright did not know Wright was black since he had never previously met him. He believed that Shields had never met Wright and, therefore, he speculated that Shields did not know Wright was black. Notwithstanding, McNulty acknowledged that Shields rejected Wright as a tenant because he received rental assistance. I credit McNulty’s testimony.

9. Wright testified that prior to October 1, 2001, he called Respondents’ office to ask for the keys to the unit. According to Wright, Fasanelli informed him that the Arlington Road apartment was no longer available. Wright claimed that Fasanelli told him that the landlord wanted to increase the rental price and did not want to rent to Wright because he had a son and had a section 8 voucher. Wright claimed that after Fasanelli informed him that the apartment was unavailable, he called Fran Coulter of the Woburn Housing Authority and asked her for assistance. Coulter then apparently spoke with Shields and McNulty about the situation. I credit Wright’s testimony.

10. According to McNulty, Coulter stated to him that Wright would be willing to pay the higher rent demanded by Shields. McNulty testified that he then

communicated the offer to Shields, but Shields rejected it. McNulty testified that Shields subsequently came into his office to inform him that he was taking the property off the market. McNulty claimed that he told Shields, "You know, you really should consider this. This guy is a fine guy. There's not going to be a problem." According to McNulty, Shields responded, "I don't want anything to do with the government and nothing to do with signing that type of lease." McNulty believed that Shields subsequently gave the listing for the apartment to another realtor, who rented the unit for \$1,200, or \$100 less than the listed amount Wright would have paid. I credit McNulty's testimony.

11. On September 27, 2001, Wright requested that McNulty refund his \$2,600 deposit. He claimed that he visited Respondents' office on several occasions, but he did not receive the refund until the end of October 2001. McNulty testified that after Shields refused to rent him the apartment, Wright was "steamed" and very upset. He claimed he offered to show Wright other available rental units and allegedly set up an appointment with Wright to see other apartments.

McNulty claimed he told Wright, "If you don't like [the apartment], you can pick up your deposit at the same time." According to McNulty, Wright never showed up. He stated he subsequently instructed Fasanelli to have Wright's refund check ready and to call Wright to arrange a time for him to pick it up. McNulty testified that after they set up the appointment, Wright arrived to pick up his check. I credit Wright's testimony that he came to the office on numerous occasions to pick up his deposit and he did not receive the refund until the end of October.

However, I also credit McNulty's testimony that he set up an appointment with Wright to see other apartments in Woburn.

12. Wright testified that he felt hurt, humiliated, and angry as a direct result of being denied the rental unit. In addition, although he resided in Somerville at the time, his son had already started school in Woburn; and, thus, Wright had the inconvenience of driving his son from Somerville to his school in Woburn, and then commute from Woburn to his place of work in Waltham. Wright also testified credibly that he became concerned that his ex-wife would contest his having custody of his son since he did not have a suitable apartment to rent in Woburn. With the assistance of Coulter, Wright eventually obtained a one-bedroom rental unit in Woburn. However, he testified that he really needed a two-bedroom apartment similar to the unit on Arlington Road. Wright claimed that he lived in the one-bedroom unit for eight months, during which time he and his son shared a bedroom. He stated that he subsequently obtained a two bedroom unit in Woburn. I credit Wright's testimony on these matters.

### **III. CONCLUSIONS OF LAW**

Wright has alleged that Respondents discriminated against him on the basis of race, color, familial status, and receipt of public assistance with respect to the rental of a housing accommodation in violation of M.G.L. c. 151B, §§ 4(6),(10), and (11). M.G.L. c. 151B, § 4(6) prohibits discrimination by an owner or licensed real estate broker on the basis of race and color in the terms, conditions and privileges of rental housing accommodations. Section 4(10)

makes it unlawful for any person furnishing rental accommodations, including an owner or real estate broker, to discriminate against any one who is a recipient of federal, state or local housing subsidies including rental assistance or rental subsidies. Section 4(11) prohibits an owner, real estate broker, or managing agent from refusing to rent or lease or to otherwise deny or withhold from any person an "accommodation because such person has a child or children who shall occupy the premises with such person, or to discriminate against any person in the terms, conditions or privileges of such accommodations or the acquisition thereof."

The burden of proving a violation of M.G.L. c. 151B rests with Wright. In assessing housing discrimination cases, the Commission employs the evidentiary analysis set forth in Wheelock College v. MCAD, 371 Mass. 130, 137 (1976). Although Wheelock College involved a case of employment discrimination, the standard established therein is applicable to housing discrimination claims. Attorney General v. Brown, 408 Mass. 826, 833 (1987); Mullin v. Dzierzeski, 22 MDLR 171, 173 (2000); Williams v. Everett, 24 MDLR 84, 85 (1999); Pacheco v. Cannella, 21 MDLR 151, 152 (1999); Roy v. O'Brien, 2 MDLR 1259, 1265 (1980).

The elements of a prima facie case of discrimination will vary according to the facts and circumstances of the particular allegations. Wheelock College, 371 Mass. at 135, n. 5; Pacheco, 21 MDLR at 152; Baker v. Collazo, 5 MDLR 1001, 1016 (1983); Roy, 2 MDLR at 1265. In the case at bar, in order to establish a prima facie case of housing discrimination, Wright must establish that (1) he was

a member of a protected class; (2) he applied to rent a dwelling unit; (3) he met the objective requirements of the rental; and, (4) Respondents denied him the opportunity to rent the unit. Wheelock College, 371 Mass at 137; Rose v. Windjammer Properties, 22 MDLR 13, 15, (2000); Williams, 24 MDLR at 85; Chapman v. Porfilio, 13 MDLR 1965, 1970 (1991).

Wright clearly met the first three elements of a prima facie case. He is a member of a protected class by virtue of his race, color, familial status, and receipt of Section 8 rental assistance. He also applied for the dwelling unit and met the objective requirements of the rental.

It is also undisputed that Wright was denied the opportunity to rent the apartment. However, the central issue in this case is whether Respondents, as opposed to the landlord, denied him the opportunity to lease the unit. The parties did not dispute that Wright informed McNulty or his associate Fasanelli that he was looking for an apartment for himself and his son and that he had a Section 8 voucher. Furthermore, it is undisputed that notwithstanding this information, McNulty showed Wright the property and then prepared the necessary documents for Wright to rent the apartment. The rental application expressly stated at the top of the document "SUBJECT TO OWNER'S APPROVAL", and McNulty signed the rental application on the line for the "Rental Agent." McNulty then accepted Wright's check for the security deposit and the first month's rent, and assisted in making the unit available for inspection by the local housing authority. McNulty also assisted in getting Wright's son enrolled in the Woburn Public Schools prior to their move into the apartment.

Wright also did not rebut McNulty's testimony that his office prepared the lease documents and then gave them to the Woburn Housing Authority for approval. In addition, I credited McNulty's testimony that Fasanelli subsequently gave the documents to Shields for execution, but Shields refused to sign the documents because Wright received rental assistance. Moreover, I credited McNulty's testimony that he then spoke to Shields and told him that he could not lawfully refuse to rent the apartment on the basis of Wright's receipt of rental subsidies. Nevertheless, Shields refused to rent the apartment to Wright even after McNulty informed Shields that Wright would pay a higher rent. Wright did not introduce any credible evidence that rebutted McNulty's testimony that Shields then gave the listing for the apartment to another real estate broker.

The Commission has repeatedly found real estate agents liable for engaging in unlawful housing discrimination with respect to rental property. Williams, 21 MDLR at 86; Watson v. A & C Realty, 18 MDLR 65, 66-67 (1996); Samuel v. Bott-Well Associates, 18 MDLR 155, 157 (1996); Barrett v. Realty World/Danca Realty, 17 MDLR 1665 (1995). The Commission has also found owners and landlords liable for the discriminatory acts of their agents. Goldman v. Khoury, 25 MDLR 24, 30-31 (2003); Williams, 21 MDLR at 86; Sturdivant v. Joshi, 12 MDLR 1134, 1150 (1990); Luna v. Lynch, 7 MDLR 1699, 1718-1720 (1985); Lacy v. Chanmugham, 5 MDLR 1161, 1196 (1983).

In this case, Wright essentially seeks to hold a real estate agent liable for the unlawful discriminatory conduct of an owner. However, Wright has not presented any credible evidence that McNulty, as opposed to Shields, denied

him any opportunity to rent the unit. While a principal–agent relationship existed between Shields and McNulty and principals are generally liable for the discriminatory acts of their agents committed within the scope of their authority, Restatement (Second) of Agency, § 140; I have not found any authority for the reverse proposition that an agent is liable for the discriminatory acts of his or her principal. To the contrary, in Leveille v. Cherry Hill Estates, the Commission declined to hold an individual real estate agent liable where the agent merely implemented the policies of her employer and acted “under the direction and control” of her employer in rejecting applicants for housing with Section 8 housing subsidies. 25 MDLR 191, 193, *aff’d*, 25 MDLR 453 (2003). The Commission, in Leveille, held that an individual real estate agent could not be found liable in absence of “some showing of his or her intent to discriminate through an action or inaction in deliberate disregard of [a complainant’s] rights.” *Id.*, *citing*, Woodason v. Norton School Committee, 24 MDLR 21, 61, *aff’d*, 25 MDLR 62, 64, (2003).

Here, I find that McNulty did almost everything within his power and control to rent the unit to Wright. In summary, McNulty showed him the apartment, prepared the rental application, arranged for the inspection of the apartment by the local housing authority, and assisted in getting Wright’s son enrolled in the Woburn Public Schools. McNulty also arranged for the necessary documents to be approved by the housing authority and presented the documents to the owner for execution. When Shields refused to sign the documents, McNulty informed Shields that his refusal to rent the apartment

based on Wright's receipt of rental subsidies was unlawful. Consequently, Wright has not presented sufficient credible evidence by which I could infer that McNulty showed an "intent to discriminate through an action or inaction in deliberate disregard" of his rights. Although McNulty may have been somewhat responsible for failing to promptly return the deposit, Wright has failed to introduce any credible evidence of a causal connection between the delay in returning the deposit and the refusal of Shields to rent him the apartment. In addition, Wright has failed to establish that Respondents refused to return the deposit for nefarious reasons related to Complainant's membership in a protected group. Under these circumstances, Wright has failed to establish a prima facie case of housing discrimination and, therefore, failed to prove that Respondents violated c. 151B.

#### **IV. ORDER**

For the reasons set forth above, the complaint in this matter is hereby dismissed. This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So Ordered this 17<sup>th</sup> day of August, 2004.

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EDWARD R. MITNICK  
Hearing Officer