

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

SAMY MOHAMED and ESSAM IBRAHIM,
Complainants

v.

Docket Nos. 01-BPR-1909
01-BPR-1911

JOHN LEONE and FRANCINE LEONE,
Respondents

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

Appearances: John Lewis, Esq., and Lawrence Mehl, Esq., for
Complainants

I. PROCEDURAL HISTORY

On July 10, 2001, Complainant, Essam Ibrahim (“Ibrahim”), filed a complaint with the Massachusetts Commission Against Discrimination (the “Commission”), against John Leone and Francine Leone (“Respondents”). Ibrahim claimed that Respondents discriminated against him on the basis of race, color, and national origin with respect to the rental of a housing accommodation in violation of M.G.L. c. 151B, § 4(7). On July 11, 2001, Complainant, Samy Mohamed (“Mohamed”), filed a similar complaint against Respondents alleging that they refused to rent him a housing accommodation on the basis of his race, color, and national origin.

On August 28, 2002, the Commission found probable cause to credit Mohamed and Ibrahim’s allegations. On December 9, 2002, the Commission

certified the case for Public Hearing and entered an Order of Default and Sanctions against Respondents for failing to appear at any of the scheduled conferences and otherwise not participating in this proceeding.¹ Respondents did not file a petition to remove the default under 804 CMR 1.21(8)(d). Pursuant to 804 CMR 1.21(8)(c), a default hearing was held before me on January 21, 2003, in Boston, MA. Respondents did not attend the hearing after receiving proper notice. At the public hearing, Complainants testified and introduced evidence regarding Respondents alleged acts of unlawful discrimination and the damages each sustained therefrom. In reaching my decision, I have considered the entire record, including the testimony and exhibits introduced at the public hearing.

II. FINDINGS OF FACT

1. Complainant, Essam Ibrahim, is a U.S. citizen of Egyptian national origin and a person of brown color. From 1995 to July 2001, Ibrahim rented a two-bedroom apartment from Respondents on the third-floor of the premises located at 912 Winthrop Avenue in Revere, MA. The apartment was one of three units in the premises.

¹ At the Public Hearing, Deborah A'vant testified that she called Respondents, in her capacity as a MCAD Housing Investigator, to inquire about their failure to provide any information to the Commission regarding this matter or attend any investigative conferences. According to A'vant, Francine Leone informed her over the phone that she and her husband have been throwing the notices from the Commission in the trash. A'vant further claimed that Francine made the following discriminatory remark to her concerning Complainants: "Foreigners have no rights in this country." I credit A'vant's testimony.

2. Complainant, Samy Mohamed, is a legal resident in the U.S., and like Ibrahim, a person of Egyptian national origin and brown color. Mohamed testified that he had been living in the U.S. for the past seven years and is awaiting a decision on his application for U.S. citizenship. In June 2001, Mohamed entered into an agreement with Respondents, effective July 1, 2001, for the rental of the same third floor unit at 912 Winthrop Avenue rented by Ibrahim. (Exhibit 1). Mohamed was to take possession of the unit after Ibrahim vacated the premises.

3. Complainants testified that at all times pertinent hereto, John and Francine Leone (husband and wife) owned the premises located at 912 Winthrop Avenue ("subject premises") and lived in the first floor unit of the building. Ibrahim stated that he initially rented the subject premises in 1995 from John Leone's parents. (Exhibit 3). However, sometime in 2000, John Leone announced that he was the new landlord of the premises and, thereafter, Ibrahim made out his rent checks directly to "John Leone." (Exhibit 4). I credit Ibrahim's testimony.

4. Ibrahim initially rented the unit for \$510.00 per month. He testified that in December 2000, Respondents approached him and stated they wanted to raise the rent to \$900.00. Believing \$900.00 to be too high, Ibrahim offered to pay, and Respondents agreed to accept, \$750.00 per month in rent. However, the next month, Respondents approached Ibrahim again and demanded \$1,200.00 per month in rent. Ibrahim informed Respondents that he would not pay this amount, believing it to be highly exorbitant. He claimed John Leone responded, "If you don't like it, you could leave." Ibrahim further stated that Francine Leone commented, "We want to get our own people." Moreover, he testified that

Respondents did not similarly attempt to raise the rent of the other tenant living in the second floor unit. Ibrahim believed that Respondents deliberately raised the rent to a ridiculously high amount to force him out of the apartment. I credit Ibrahim's testimony.

5. Ibrahim testified that he continued to pay Respondents \$750.00 a month in rent from January 2001 through June 2001. He claimed that throughout this period, Respondents continually demanded that he pay \$1,200.00. Unable to pay this amount, and desiring a safe environment for his pregnant wife and expected child, Ibrahim was compelled to look for another rental unit and eventually found another place to live in Revere. He then gave Respondents notice that he would be moving out by July 1.

6. Ibrahim and Mohamed were acquaintances through their involvement in the small Egyptian community in the Boston area. Through a mutual friend, Mohamed became aware that Ibrahim was vacating the unit at 912 Winthrop Avenue and he approached Respondents about renting the apartment. Mohamed had been living in a studio apartment with his wife and child and desired the larger two-bedroom unit. In June 2001, Mohamed and John Leone entered into a "Rental Application/Agreement" for the apartment. (Exhibit 1). The agreement specified that Mohamed would pay \$1,200.00 per month for the unit, with occupancy to begin on July 1, 2001. Mohamed gave Leone \$1,200.00 in cash for the first month's rent.

7. Just prior to vacating the premises, Ibrahim told Respondents that he needed to stay a few extra days in the unit before he could fully move out. He and Mohamed had arranged to help each other move on July 4, 2001, with the assistance of friends. According to Ibrahim, John Leone told him, "If you stay one extra day, you need to pay full month's rent."

8. On July 4, 2001, Mohamed showed up at the premises with his friends and a moving truck full of his possessions. John Leone then came out of the house and told Mohamed, "You're not moving in, I don't feel comfortable with you in my house." After an exchange of words about the rental agreement they had signed, John Leone made numerous profanity filled ethnic and racial slurs including, "We don't need any nigger here", "You're a mother fucker", and, "You're a fucking foreigner." According to Mohamed, Francine Leone then made the comment, "This is the USA, we don't need any black nigger here." Mohamed then called the police. After the police arrived, John Leone continued to assert that "it's my building – I am free to do whatever I want." Mohamed and Leone then argued about the return of the \$1,200.00 deposit. Mohamed testified that John initially would not give back the money and told Mohamed to come back tomorrow. With the assistance of the Revere Police, John Leone eventually wrote a check to Mohamed for the deposit. Mohamed testified that John then made a threatening remark to him, "I know where you live – I can get you any time." Mohamed testified that he took Leone's comment as a personal threat. At no time did Mohamed provoke Respondents' actions. I credit Mohamed's testimony.

9. After order appeared to be restored, Ibrahim began moving the remaining items in his apartment with the assistance of his friends. Francine Leone then knocked on Ibrahim's door and told him that one of his friends was creating a problem downstairs. Francine then pointed to one of Ibrahim's friends and stated to Ibrahim, "If he breaks one of the flower pots, I will break your neck." According to Ibrahim, she then got very angry and began arguing with him. He testified that Francine, standing only 15 inches away from Ibrahim, then spit directly into his face. Francine then made a profanity filled outburst: "You're all a bunch of cockroaches and should be treated that way," "You fucking foreigners, you have no right to be here." Police again were called to the scene and when they arrived, Francine was still using profanity toward Ibrahim and his friends. In addition, Ibrahim testified that John Leone made physical and verbal hostile remarks to him and his friends, and needed to be physically restrained by the police. Ibrahim claimed that John likewise threatened him stating he could get him anytime and, "I know where you live." At no time did Ibrahim or his friends provoke Respondents' actions. I credit Ibrahim's testimony.

10. Hesham Hassan testified that he was at the subject premises on July 4, 2001, to help Mohamed and Ibrahim move. He largely corroborated Mohamed and Ibrahim's testimony regarding the events of that day at 912 Winthrop Avenue. In particular, he witnessed John Leone point to Mohamed and yell, "This is an American flag, you mother fucker, go back to your own country." He also saw Francine Leone standing right in front of Ibrahim as Ibrahim wiped spit off his face. Mohamed, Ibrahim, and Hassan all testified that in Egyptian culture,

spitting is highly insulting. Mohamed claimed that such an incident could result in families “going to war.” I credit Mohamed, Ibrahim, and Hassan’s testimony.

11. Mohamed testified that Respondents derogatory outrage upset him greatly and made him feel like crying. Because he had already given notice to his prior landlord, he could only stay in his old apartment for the next fifteen days. He and his family then moved in with friends until he found another rental unit in Fall River. In addition, as a result of John Leone’s threats, Mohamed felt terrified and became overly concerned about his family’s safety. Consequently, he subsequently sent his son back to Egypt to live with his mother because he feared for the child’s welfare. He stated that every time he thinks about the incident with Respondents, he feels likes crying. I credit Mohamed’s testimony.

12. Ibrahim testified that the incidents with Respondents made him feel completely humiliated. He claimed that he was a very respectful tenant who paid his rent in a timely manner and fixed up the apartment on his own. He felt angry and upset about being treated in such a disgraceful manner. I credit Ibrahim’s testimony.

III. CONCLUSIONS OF LAW

Massachusetts General Laws, c. 151B, § 4(7), prohibits an owner of a housing accommodation from discrimination on the basis of a person’s race, color, or national origin with respect to both the refusal to rent or lease such accommodation, and in the terms, conditions, and privileges of housing.

Although Respondents also lived at 912 Winthrop Avenue, the third floor rental unit they leased to Ibrahim and purportedly rented to Mohamed, one of three units on the property, falls within the jurisdiction of M.G.L. c. 151B, § 4(7).

The burden of proving a violation of M.G.L. c. 151B rests with Complainants. The analysis for determining whether unlawful discrimination has occurred is contained in Wheelock College v. MCAD, 371 Mass. 130, 135-139 (1976). Although Wheelock College involved a case of employment discrimination, the standard established therein is applicable to housing discrimination claims. Pacheco v. Cannela, 21 MDLR 151, 152 (1999); Unubum v. McGrath, 19 MDLR 81, 82 (1997); Rivera v. Djordjeraic, 15 MDLR 1058 (1993); Agnew v. Novick, 4 MDLR 1584 (1982); Roy v. O'Brien, 2 MDLR 1259 (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. Consequently, Mohamed and Ibrahim's claims will be analyzed separately.

A. MOHAMED

Mohamed has presented "direct evidence" of unlawful discrimination. "Direct evidence" is evidence that "if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias was present..." Wynn & Wynn, PC v. MCAD, 431 Mass. 655, 665 (2000); Fountas v. Medford Public Schools, 22 MDLR 264, 269 (2000). In a direct evidence case, a complainant

does not have to adhere to the three stage burden shifting paradigm set forth in McDonnell-Douglas Corp. v. Green, 411 U.S. 792, 802 (1972). Loeb v. Textro, 600 F.2d 1003, 1018 (1st Cir. 1979). Rather, a mixed motive analysis is applied to a complainant's allegation of discrimination. Pursuant to this analysis, Mohamed must prove by a preponderance of the evidence that a proscribed factor played a motivating part in the Respondents' refusal to rent an apartment to him. Fountas, 22 MDLR at 269.

I find that Mohamed has met this burden. In June 2001, Mohamed and Respondents executed a rental agreement for the subject premises. When Mohamed attempted to move into the premises on July 4, 2001, John Leone refused to let him move in and told him "I don't feel comfortable with you in my house." John Leone then subjected Mohamed to numerous racial and ethnic slurs including, "We don't need any nigger here", "You're a mother fucker", and, "You're a fucking foreigner." Mohamed's friend, Hesham Hassan, recalled John Leone pointing to Mohamed and yelling, "This is an American flag, you mother fucker, go back to your own country." According to Mohamed, Francine Leone likewise made a highly derogatory ethnic slur stating, "This is the USA, we don't need any black nigger here." Respondents' refusal to allow Mohamed to move into the apartment, coupled with their highly derogatory ethnic and racial slurs, constituted overwhelming direct evidence of discrimination on the basis of race, color, and national origin. Therefore, Mohamed has established a prima facie case of discrimination.

In this case, Respondents failed to attend the public hearing or otherwise participate in any aspect of this case.² Consequently, I conclude that Mohamed has established an un rebutted prima facie case of housing discrimination on the basis of race, color, and national origin in violation of G.L. c. 151B, § 4(7); and, Respondents are jointly and severally liable to Mohamed for any damages sustained therefrom.

B. IBRAHIM

Ibrahim has likewise presented “direct evidence” of Respondents’ unlawful discrimination. Specifically, shortly after John Leone declared he was the new landlord of the premises, he attempted to raise Ibrahim’s rent from \$510.00 per month to the exorbitant sum of \$900.00 per month. After Ibrahim agreed to pay \$750.00 per month, Respondents then continually demanded that he pay \$1,200.00 per month. When Ibrahim refused to pay this excessive amount, John Leone responded, “If you don’t like it, you could leave.” Francine Leone also commented, “We wanted to get our own people.” Thereafter, as Ibrahim attempted to peacefully vacate the premises, Francine Leone spit in his face and both John and Francine Leone subjected Ibrahim and his friends to numerous hateful ethnic and racial slurs. Under these circumstances, I conclude that Respondents’ actions and comments raised an unmistakable inference that they held a bias against Complainant on the basis of his race, color, and national origin. Therefore, Complainant has established direct evidence that Respondents’ discriminatory animus was a motivating factor in their decision to

² See, note 1, *supra*.

exorbitantly increase Ibrahim's rent in a blatant attempt to have him vacate the premises.

Even assuming, arguendo, that no "direct evidence" of discrimination exists, Ibrahim has still established a prima facie case of discrimination under the inferential model of proof articulated in Wheelock College, 371 Mass. at 135-139 (1976). Under this standard, Ibrahim may establish a prima facie case of discrimination under § 4(7) by showing that he (1) is a member of a protected class (2) who sought housing, (3) was qualified for that housing, and (4) was adversely or disparately treated concerning the property in question. Pacheco, 21 MDLR at 152; Papa v. Pelosi, 17 MDLR 1467,1472 (1995); Roy, 2 MDLR at 1266.

Here, Ibrahim is a person of color and Egyptian ancestry and, therefore, a member of a protected class. Since he was initially successful in renting the apartment at 912 Winthrop Street, no dispute exists with respect to his seeking to rent the unit and his qualifications to do so. In addition, Respondents adversely treated Ibrahim by attempting, in December 2000, to increase his rent from \$510.00 to \$900.00, and then one month later, demanding that he pay \$1,200.00 in rent. In addition, Ibrahim testified credibly that Respondents did not make any attempt during this period to increase the rent of the other tenant living in the premises. Lastly, Respondents' hateful conduct toward Ibrahim on the day he vacated the premises confirmed that they acted as a result of their blatant discriminatory animus.

As stated above, Respondents failed to attend the public hearing or present any evidence to rebut Ibrahim's testimony. Consequently, regardless of whether we apply the direct evidence or inferential model of proof, Ibrahim has established an un rebutted prima facie case of discrimination on the basis of race, color, and national origin. Therefore, I conclude that Respondents are jointly and severally liable to Ibrahim for engaging in unlawful housing discrimination in violation of G.L. c. 151B, § 4(7).

IV. REMEDY

M.G.L. c. 151B, paragraph 5 authorizes the Commission to grant remedies to make Complainant whole, including emotional distress damages. College-Town v. MCAD, 400 Mass. 156, 168-169 (1987); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 181-182 (1985); Unubum, 19 MDLR at 83.

Based on the evidence and the testimony, I conclude that both Mohamed and Ibrahim suffered significant emotional distress as a result of the Respondents' egregious discriminatory acts. Ibrahim suffered from the stress and ordeal of being constructively evicted from the apartment. In addition, Ibrahim had to endure the ultimate humiliation of being spit in the face. Mohamed had to endure the embarrassment of showing up with all of his possessions at the premises, only to be refused entry, and then left without a place to live. Moreover, Respondents made highly degrading and derogatory slurs to both Complainants in front of their friends. Lastly, both Mohamed and Ibrahim remained fearful of John Leone after he made highly threatening remarks. Under

these circumstances, I conclude that both Mohamed and Ibrahim are each entitled to an award of \$50,000.00 in emotional distress damages.

Additionally, in consideration of my finding that each of the Respondents engaged in outrageous unlawful conduct with respect to a housing practice, John Leone and Francine Leone shall each be assessed a civil penalty pursuant to M.G.L. c. 151B, § 5, in the amount of \$10,000.00.

V. ORDER

Based on the foregoing findings of fact and conclusions of law, it is hereby ordered that:

1. Respondents John Leone and Francine Leone shall pay Complainant, Samy Mohamed, within 60 days of receipt of this decision, the sum of \$50,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

2. Respondents John Leone and Francine Leone shall pay Complainant, Essam Ibrahim, within 60 days of receipt of this decision, the sum of \$50,000.00 in damages for emotional distress, plus interest at the statutory rate of 12% per annum from the date the complaint was filed until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

3. Respondent John Leone shall pay the Commission, within 60 days of receipt of this decision, a civil penalty in the amount of \$10,000.00.
4. Respondent Francine Leone shall pay the Commission, within 60 days of receipt of this decision, a civil penalty in the amount of \$10,000.00.
5. The parties shall notify the Clerk of the Commission as soon as the above-described ordered payments have been made. If Respondents fail to comply with the terms of this Order within the time periods allotted, then Complainant should immediately notify the Clerk of the Commission.

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 12th day of March, 2003.

EDWARD R. MITNICK,
Hearing Officer