

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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TERESA SMITH AND  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION  
Complainants

Against

Docket No. 05 BPR 03107

THIET V. CAO  
Respondent

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Appearances: William L. Berman, Esq., Supervising Attorney, Suffolk Housing  
Clinic, accompanied by Nicholas D. Cappiello, Christopher Padfield, and  
Rachel E.D. Churchill, Suffolk Law Students for Complainant Smith

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about, November 21, 2005, Theresa Smith (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that Respondent Thiet V. Cao discriminated against her in violation of G. L. c. 151B, section 4 (11) and c. 111, section 199A by refusing to rent an apartment to her because she had a child under six years old, by refusing to delead the apartment, and by refusing to return her security deposit.

The MCAD issued a probable cause finding on October 11, 2006, and certified the case for public hearing on January 16, 2007. A public hearing was held on April 20,

2007. Respondent did not appear for the public hearing, resulting in the Entry of Default pursuant to 804 CMR 1.21(8)(a). Respondent failed to move to vacate the Entry of Default.

The Complainant testified at the public hearing. Counsel for Complainant submitted a post-hearing brief.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. In January of 2005, Complainant Teresa Smith had three children, including an infant son born July 18, 2004. As a result of renovations being made in her rented apartment, Complainant was forced to look for a new apartment.
2. After a two-month search, Complainant found a listing for an apartment at 284 Washington Avenue in Chelsea. The cell phone number in the advertisement belonged to Respondent. According to the deed and mortgage documents supplied by Complainant, Respondent purchased the property at 284 Washington Avenue, Chelsea, MA 02150 on March 11, 1997. Complainant's Exhibit 1.
3. On January 5, 2005, Complainant viewed the apartment at 284 Washington Avenue. She liked the neighborhood, the size of the apartment, its amenities, and its off-street parking. According to Complainant, the apartment was beautiful, well laid out, had three bedrooms, storage, and a washer and dryer. Complainant testified that she told Respondent that she wanted the apartment, which rented for \$1,600.00.
4. On January 5, 2005, Respondent accepted a deposit for the apartment from

- Complainant. The deposit consisted of \$300.00 in cash and \$200.00 by check. Respondent gave Complainant a receipt for the cash. Complainant's Exhibit 3.
5. Complainant intended to pay the rent with Section 8 housing assistance. As a Section 8 housing subsidy recipient who had an infant child, Complainant could only rent the apartment if it received a lead paint certificate of compliance.
  6. Respondent agreed to have the property inspected for lead paint.
  7. Documents from the Metropolitan Boston Housing Partnership, which administers Section 8 benefits, confirm that there was a Request for Tenancy Approval form submitted for the apartment on January 5, 2005. A representative of the agency sent Respondent a letter dated January 20, 2005 notifying him that Complainant had submitted a Request for Tenancy Approval and that the agency required a Letter of Lead Compliance.
  8. Complainant waited for two weeks and then called Respondent to inquire about the status of the lead paint inspection. Respondent told her in a rude tone of voice that the property had been inspected and failed to receive a lead paint certificate because of the presence of lead paint in the garage. Respondent told Complainant that he would not delead the garage because it was too expensive.
  9. Respondent refused to return the \$300.00 in cash that Complainant had given him as part of her security deposit, but Respondent did not cash Complainant's \$200.00 check. Respondent told Complainant that he retained the cash in order to cover the cost of the failed lead inspection.
  10. Complainant was forced to move to 38 Grove Street in Chelsea. According to Complainant, the Grove Street apartment was "horrible." It was small, located on

the street level of an unsafe street, and was infested with mice and cockroaches.

Complainant testified that gang activity took place on the street outside the apartment. The Grove Street apartment only had two bedrooms whereas Respondent's apartment had three bedrooms.

11. Complainant testified credibly that she and her children hated the apartment on Grove Street and that she became upset and depressed about her housing situation. According to Complainant, she lost sleep because the apartment was on the first floor and she was frightened for her family's safety. As a result of her living situation, Complainant briefly resumed taking Zoloft, an antidepressant, which she had been prescribed for postpartum depression after the birth of her third son.

12. After residing at the Grove Street location for a short period of time, Complainant moved to 22 Heard Street, which she described as better than Grove Street but inferior to 284 Washington Avenue. Complainant pays \$1530.00 to rent 22 Heard Street. According to Complainant, she was forced to take off one week from work in order to move from Grove Street to Heard Street, time she would not have lost had she secured the Washington Avenue apartment. Complainant testified that she lost her job in August of 2005 due to the stress of "everything all together." She eventually began to work at home baking cakes and returned to a retail position in March of 2007.

### III. CONCLUSIONS OF LAW

Respondent is statutorily prohibited from refusing to rent an apartment to Complainant because of her Section 8 rental subsidy and/or because of her children.

Likewise, the lead paint law prohibits a landlord from refusing to rent an apartment to tenant(s) with a child under the age of six where the refusal is based on the presence of lead paint,. See M.G.L. ch. 151B, section 4 (10) & (11); ch. 111, section 199A (A) & (B). Federal housing requirements enacted pursuant to Section 8 of the U.S. Housing Act of 1937, 42 U.S.C. 1437f stipulate that no units which fail to pass a lead paint inspection under the Section 8 voucher program may be rented to families with children less than six years old and that the failure to comply with program requirements is not a valid reason for rejecting a Section 8 recipient. In Massachusetts, lead paint prohibitions also apply generally to rental units under the Massachusetts Lead Law and the Massachusetts Childhood Lead Poison Prevention Program Regulations. See G.L. ch. 111, section 199A; Complainant's Exhibit 2. The uncontroverted evidence in the case establishes that Respondent refused to rent his 284 Washington Avenue property to Complainant, who is a Section 8 recipient with a child under six years old, because of the presence of lead paint in the unit's garage. His refusal to do so constitutes housing discrimination in violation of both G.L.c.151B section 4(10) & (11) and c. 111, section 199(A) & (B).

In order to prove a case of housing discrimination, Complainant must first show that: (1) she was a member of a protected class at the time of the alleged discriminatory act, (2) she sought housing that was available for rent, (3) she was objectively qualified to rent the housing, and (4) she was deterred from renting and ultimately refused tenancy because of her protected class. See Wheelock College v. MCAD, 371 Mass. 130 (1976) (setting out general requirements for a prima facie case of discrimination); Garay v. Soumas, 13 MDLR 1065, 1081-82 (1991) (prima facie elements of housing discrimination case); French v. Krajewski, 12 MDLR 1056 (1990) (same).

Complainant has met her burden of establishing a prima facie case of unlawful housing discrimination. Complainant was the mother of a child under the age of six with a Section 8 housing voucher at the time she sought to rent from Respondent. Accordingly, Complainant was a member of protected classes under Chapter 151B, section 4(11). She applied for an apartment owned by Respondent. Complainant was qualified to rent but was prevented from doing so by Respondent.

Once Complainant establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for his action. See Wheelock College, 371 Mass. at 136. Respondent failed to appear at the public hearing and, thus, offered no reason for refusing to rent to Complainant. According to Complainant's credible testimony and documents from the Metropolitan Boston Housing Partnership, Respondent refused to rent her his apartment because she was a Section 8 participant with a child under six years old and because the lead paint inspection revealed the presence of lead paint in the apartment's garage.

The evidence persuades me that Respondent would not accept Complainant's Section 8 subsidy because Section 8 requires that rental units pass a lead paint inspection. M.G.L. Chapter 151B makes it an unlawful practice to for a landlord to refuse to rent to a tenant because of satisfy Section 8's regulatory requirements. I conclude that Respondent declined to rent to Complainant because of the requirement under Section 8 that rental units pass a lead paint inspection and, more generally, because Massachusetts law requires the deleading of units rented to families with children under six years old.

Based upon all of the above, I conclude that Respondent violated M.G.L. Chapter 151B.

D. Damages

A. Out of Pocket Damages

Complainant is entitled to reimbursement for the \$300.00 cash deposit which she gave to Respondent for the apartment on Washington Avenue. I decline to grant Complainant reimbursement for expenses associated with her second move to Heard Street because Complainant failed to document said expenses. I also decline to grant Complainant damages in connection with losing her job because the evidence does not support an inference that she lost her job primarily due to housing-related stress.

B. Emotional Distress Damages

Complainant's entitlement to an award of monetary damages for emotional distress does not need to be based on expert testimony; it can be based solely on her testimony as to the cause of the distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. See Stonehill, 441 at 576. An award must rest on substantial evidence that is causally-connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm.

Complainant testified credibly that she and her children hated the temporary housing they were forced to move to after the Washington Avenue apartment fell through and that she feared for her family's safety. She credibly described herself as upset and depressed after moving to Grove Street which she described as "horrible" -- small,

located on an unsafe street, and infested with mice and cockroaches. Because there were only two bedrooms, Complainant was forced to sleep with her infant son and her daughters were forced to sleep in the same room. According to Complainant, she lost sleep because the apartment was on the first floor and she was scared. Having to move under the circumstances described above created ongoing stress for Complainant and for her three children. As a result of her living situation, Complainant briefly resumed taking Zoloft, an antidepressant, which she had been prescribed for postpartum depression after the birth of her third son and which she had stopped taking prior to finding the Washington Avenue apartment. I conclude that Respondent's conduct exacerbated Complainant's preexisting depression. See MCAD v. Laidlaw Transit, Inc., 26 MDLR 216 (2004) (awarding \$75,000.00 in emotional distress damages where Respondent's actions exacerbated Complainant's preexisting anxiety causing Complainant to seek treatment and take medication); Williams v. Karl Storz Enovision, Inc., 26 MDLR 156 (2004) (awarding \$20,000.00 in emotional distress damages where Respondent's employee's conduct "likely exacerbated [Complainant's] preexisting mental anguish principally caused by other factors ..."). Based on the foregoing, I conclude that Complainant is entitled to \$15,000.00 in damages for the emotional distress caused by Respondent's unlawful conduct..

#### IV. ORDER

This decision represents the final order of the Hearing Officer. Respondent is hereby ORDERED to:

(1) Pay to Complainant, within sixty (60) days of receipt of this decision, the sum of

\$300.00 for the loss of Complainant's cash security deposit; \$15,000.00 in emotional distress damages; and 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.

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 29<sup>th</sup> day of November, 2007.

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Betty E. Waxman, Esq.,  
Hearing Officer

