

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D., ELIZABETH CUMBERBATCH,
FRED WALKER, ANTHONY WALKER
& ANDREW WALKER,¹
Complainants

DOCKET NO. 13-BPH-02588

v.

IRINA TEMKINA,
Respondent

Appearances:

Caitlin A. Sheehan, Esquire, Commission Counsel
Elliott N. Tiomkin, Esquire for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about September 27, 2013 Complainant Elizabeth Cumberbatch, who is Caucasian, and her adult children Fred Walker, Anthony Walker and Andrew Walker, who are bi-racial, filed a complaint with this Commission alleging that Respondent Irina Temkina refused to rent them a home on the basis of Cumberbatch's association with her sons, in violation of M.G.L. c. 151B §47. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed and the case was certified for Public Hearing. A public hearing was held before me on June 11, 2018. After careful consideration of the entire record in this

¹Complainants Fred Walker, Anthony Walker & Andrew Walker did not appear at the public hearing and there was no explanation for their absence, nor was there any credible evidence concerning their actions in this matter. Therefore they are hereby dismissed as party Complainants in this matter.

matter and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Elizabeth Cumberbatch is a Caucasian woman currently residing in Beverly, MA. She has three adult sons, Fred Walker and twins, Anthony and Andrew Walker, whose father, Complainant's former husband, is black. In 2013, Anthony and Andrew Walker were 18 and Fred was 19 years old.

2. Respondent Irina Temkina owns a single-family home at 5 Newton Road in the Magnolia section of Gloucester, Massachusetts which was her family home for a number of years until she moved to California in 2006. The property has been a year-round rental since she moved out of state.

3. In 2013, Complainant and her three sons resided in Beverly public housing, where her rent was \$100 per month. In August 2013, Complainant was notified of a rent increase to \$1,600 effective October 1. She stated she had an unspecified "problem" with the housing authority and that the rent increase was due to the housing authority's determination to count her sons' income in calculating the family's monthly rent. Complainant later testified that the rent increased because she had just begun working. However she acknowledged that she had been working before the effective date of the rental increase and did not know whether the rent increase was due to her sons' income or her own income.

4. Complainant has worked for approximately six years as a "family partner" at Northeast Behavioral Health, which later became Lahey Health Behavioral Services. She stated she earned \$20,000 in 2011 and \$24,000 in 2012. Her gross income in 2013 was \$16,592.46. According to her testimony, Complainant did not work for the first half of 2013.

5. In August, 2013, because of the rental increase, Complainant decided to move to a house where she and her sons would have more space and a yard with a rent similar to what she would be paying for her current apartment. She responded to Respondent's ad on Craigslist for the property at 5 Newton Road, a 3-bedroom house with a fireplace and outdoor space at an advertised rent of \$1,890 per month. Complainant called Respondent and arranged to view the property.

6. On or about September 3, 2013, Complainant and Respondent met at the property and Respondent showed Complainant around. According to Complainant, on that date, she completed a written application that required her to provide her income. Respondent asked for no landlord references, rental history or income verification, nor did she perform a credit check. Complainant told Respondent that the listed rent of \$1,890 was a little high and Respondent agreed to reduce the rent to \$1,690 (Testimony of Complainant)

7. Respondent testified credibly that while she did not provide Complainant with written application, she inquired about Complainant's income. She stated that Complainant told her that her combined family income was \$100,000. Respondent agreed to reduce the rent to \$1,690 in order to rent the house quickly. Complainant testified that Respondent called her the following day and offered to rent her the house.

8. Complainant denied telling Respondent that her family income was \$100,000. The family's total monthly household net income was \$2,841. Complainant testified that with her income and the income of her sons, she believed that she could pay the rent of \$1,690. ²

² In 2013, Anthony Walker's net monthly pay was \$1,362.37 in 2013, Andrew Walker's monthly net pay was \$1,007.33, Fred Walker's monthly net pay was \$7,734.75 and Complainant's monthly net pay was approximately 2,000. (Testimony of Complainant; Exs. R-3; R-4) After paying the rent of \$1,690, the household would have remaining \$1,151 for all other expenses. Complainant estimated her utilities would cost \$200 per month, gas and insurance for her car would be approximately \$125 per month and food for her dog was \$20 per month. She stated that her food stamps of approximately \$200 per month would be sufficient to cover the cost of food for her household of four and that her family didn't buy clothing.

9. On September 5, 2013, Complainant, this time accompanied by her sons, met with Respondent in order to sign the lease. Complainant testified that during this meeting, when one of her sons extended his hand to Respondent in greeting, she refused to shake his hand. I do not credit Complainant's testimony with regard to this allegation, which was credibly denied by Respondent. This allegation was not made in Complainant's complaint, nor was it alleged in Complainant's responses to an interrogatory seeking "all facts relied upon in support of [her] allegation that [she] was denied the apartment when Respondent met [her] sons." I find that Complainant fabricated this account in order to enhance her complaint.

10. On September 5, 2013, Respondent and Complainant signed a lease agreement requiring Complainant to pay first and last months' rent plus one month's security deposit for a total of \$5,070.³ When they signed the lease Complainant gave Respondent two money orders dated September 5, 2013 and totaling \$700.

11. Respondent hand-wrote near the bottom of a copy of the signed lease that she had received \$700 from Complainant. Complainant testified that Respondent agreed to be paid over time for the last month's rent and beneath Respondent's hand-written acknowledgement of receiving \$700, Complainant hand-wrote on the same copy of the lease that she would give Respondent \$2,000 per month until the last month's rent was paid, a deviation from the lease terms that she testified was agreed to by Respondent. I do not credit Complainant's testimony. Respondent denied ever agreeing to the \$2,000 per month payments and she did not sign off on Complainant's handwritten notation. I credit Respondent's testimony in this regard and I find that Complainant added the sentence to her copy of the lease in a post hoc attempt to bolster her complaint.

³ Complainant initially testified that her sons accompanied her to a third meeting with Respondent when she went to pick up the keys to the house. I find that a third meeting did not take place.

12. Complainant testified that on September 5, 2013, in addition to the \$700 in money orders, she gave Respondent three post-dated checks totaling \$3,670.⁴ I do not credit her testimony that she gave the checks to Respondent, who credibly denied receiving them. Complainant testified to several versions of how she planned to pay to pay off the required first and last months' rent and security deposit over time. She attributed some of the inconsistencies to her having "a bad memory."

13. Complainant testified that she had sufficient funds in her bank account in September 2013 to cover the deposit and ensuing rent; however Complainant did not provide any evidence of her bank account balance at the time of the events in question.

14. Respondent testified credibly that on September 5, 2013 Complainant came to the premises along with her three sons and Respondent and Complainant signed a one-year lease that would commence on September 15, 2013. Complainant gave Respondent \$700 in two money orders and said she would give Respondent the remainder of the rent the following day. Respondent expected Complainant to give her a total of \$5,070 for the first and last months' rent and a security deposit. Respondent refused to give Complainant the keys to the house until Complainant provided her with the remainder of the money owed.

15. Respondent testified credibly that over the next few days, after repeatedly calling Complainant to ask when she planned to give Respondent the remainder of the money due, Complainant told Respondent that she had no more money. Respondent then told Complainant she could not rent the house to her because she could not afford the rent. I credit Respondent's testimony.

⁴ Complainant produced copies of two checks for \$990 each, post-dated September 13, 2013 and a third check for \$1,690 post-dated for February 15, 2014. These checks are in addition to the two money orders totaling \$700 that she gave Respondent.

16. On September 11, 2013, Respondent and Complainant arranged to meet at Respondent's bank in Beverly so that Respondent could return the \$700 that Complainant had provided to her on September 5, 2013. Since Respondent had already cashed the money orders, Respondent withdrew from her bank account \$700 in cash which she gave Complainant. Complainant and Respondent signed a notarized statement that Complainant received the cash on that date.⁵ (Ex. C-10)

17. After being turned down by Respondent, Complainant continued to look for another place to live and in approximately December 2013, she located an apartment in Gloucester for which she stated she paid \$1,600 per month, with no required last month's rent or security deposit. Complainant claimed that she withheld rent at the Gloucester apartment and acknowledged that the landlord brought an eviction action against her which was resolved by her agreement to move out in two months following the eviction in return for the landlord's forbearance of two months back rent.

18. Respondent denied that she rejected Complainant's tenancy because of her sons' race and testified credibly that in 2005 she had rented her Beverly home to an African American man named Lorenzo.

19. After Complainant was denied rental of Respondent's home, Respondent rented the property to a woman and her college age son, both of whom were Caucasian. She stated that the woman did not reside the premises but was a guarantor of the rent for her son who resided there for a year with a series of roommates.

⁵ Complainant testified that she agreed to meet Respondent at the property on September 13, 2013 with money orders and the post-dated checks. I do not credit her testimony which was wildly inconsistent. Complainant acknowledged that she received the \$700 cash on September 11, 2013, thus there would have been no reason for her to meet with Respondent after that date.

20. Hakeem Jimoh, who is African-American, testified that he has rented the premises at 5 Newton Road from Respondent since the fall 2014. Jimoh testified credibly that he first met Respondent when he viewed the property and again when he signed the lease, at which time he provided Respondent with a security deposit and first and last months' rent. Jimoh currently pays rent of \$1,945 per month which he splits with a roommate. Jimoh testified credibly that he and Respondent have a friendly relationship, have shaken hands and that he greeted Respondent with a hug prior to his testifying at the public hearing. (Testimony of Jimoh; Testimony of Respondent; Exs. R-1, R-2)

III. CONCLUSIONS OF LAW

Massachusetts General Laws, Chapter 151B, Section 4(6) prohibits discrimination on the basis of race and color in the rental of housing. Complainant alleges that she was denied housing because of her association with her bi-racial children who were also prospective tenants of the property in question. In order to establish a prima facie case of housing discrimination, Complainant must show that: 1) she was a member of a protected class at the time of the alleged discriminatory act; 2) she sought to rent housing; 3) she was objectively qualified to rent the housing; and 4) she was deterred from renting and/or refused tenancy because of the membership in a 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, 1081-81 (1991) Zupka & Matulionyte v. Fernandez, 32 MDLR (2010) Ortega v. Papalia, 35 MDLR 110 (2013).

Although Complainant is Caucasian, she has standing to file a claim of racial discrimination by virtue of her close association with her sons who are bi-racial. In recognizing

a claim of associational disability discrimination, the Supreme Judicial Court acknowledged the “longstanding and consistent interpretation given to [c.151B] by the Massachusetts Commission Against Discrimination.” Flagg vs. Alimed, Inc., 466 Mass. 23, 27 (2013). The court held that the concept of associational discrimination furthers the purposes of c. 151B as a wide-ranging law, “seek[ing] . . . removal of artificial, arbitrary, and unnecessary barriers to full participation in the workplace” that are based on discrimination.” Id., at 30. See, Papa v. Pelosi and Paulo, 18 MDLR 174(1996) (Full Comm’n upheld hearing officer’s finding of liability for racial discrimination where Respondent landlords denied housing to Complainant who was white, because of her son's race (black); Tetro v. Elliot Popham Pontiac, 173 F.3d 988 (6th Cir. 1999) (white employee discharged because of biracial child held to be discriminated against on the basis of race, even though root of discriminatory animus was prejudice against biracial child)

Complainant sought to rent housing for herself and her three bi-racial children and was refused a tenancy after the homeowner met her children. However, Complainant has failed to establish that she was objectively qualified to rent the house advertised by Respondent. The credible testimony presented at hearing is that Complainant was unable to pay the total deposit required by the landlord. If a reasonable fact-finder could conclude that Complainant has established a prima facie case, it is incumbent upon Respondent to articulate a legitimate non-discriminatory reason for the rejection. See Blare v. Husky Injection Molding Sys. Inc., 419 Mass. 437, 441-442 (1995) Respondent testified credibly that Complainant failed to produce the required sum of \$5,070 for first and last months’ rent and a security deposit at the time of execution of the rental agreement. This was Respondent’s articulated legitimate non-discriminatory reason for terminating the rental transaction. Respondent also credibly testified that the race of Complainant’s children was not an issue. This assertion was supported by

credible evidence that Respondent has in the past and at the time of hearing rented her home to a person of color. In sum, Respondent has offered a legitimate non-discriminatory reason for terminating the rental transaction and returning Complainant's deposit.

Once Respondent articulates a legitimate non-discriminatory reason for the denial, the Complainant must persuade the fact-finder by a preponderance of the evidence that the articulated justification is a pretext for unlawful discrimination. Lipchitz v. Raytheon, 434 Mass. 493 (2001); Blare v. Husky Injection Molding Systems Boston, Inc., 419 Mass. 437, 444-445 (1995) The only evidence of pretext offered by Complainant was that the rejection of her tenancy occurred after Respondent met her bi-racial sons. While it could be argued that based on the timing this was a reasonable assumption, Complainant has not persuaded me that this was the case.

Respondent testified credibly that she did not reject Complainant and her family as tenants because of Complainant's bi-racial sons. I credit her testimony that she rejected their tenancy because of Complainant's failure to pay the sum required to procure the apartment at the designated time for signing the lease and completing the rental transaction.

In contrast, Complainant testified in a markedly inconsistent manner regarding many aspects of the events in question. I disbelieved Complainant's testimony regarding Respondent's refusal to shake her son's hand because it was not raised initially or at any time prior to hearing and because Respondent credibly denied that the incident ever occurred. If such a refusal had occurred, I find it highly improbable that such a significant action evidencing possible racial animus would have been omitted from the initial discrimination complaint and from Complainant's subsequent submissions to this Commission. The alleged incident was raised for the first time at the public hearing, long after the events in question. I conclude that the incident

was fabricated in a post hoc attempt to bolster Complainant's claim of race discrimination. Complainant's testimony was sufficiently evasive and disingenuous in so many respects as to cast doubt on her credibility in general. Complainant offered conflicting testimony as to when she met with Respondent, when she purportedly gave Respondent checks, when Respondent actually met Complainant's sons, her household income and other relevant matters. I resolved these disputed issues of fact in favor of Respondent, whose testimony was credible and consistent with the documentary evidence of record. In addition to disbelieving the purported refusal to shake hands as evidence of discriminatory intent, I did not credit Complainant's testimony that she reached an agreement with Respondent to pay rent and security deposit in installments over time. Respondent credibly denied that she had sanctioned any such arrangement and testified that she expected full payment prior to turning over the keys to the premises to Complainant. Moreover, the failure of Complainant's sons to appear at the public hearing, given that they were named parties to the complaint, is further evidence in support of my conclusion that Complainant's testimony about their meeting with Respondent was not credible. I conclude that Complainant did not proffer anywhere near the funds sufficient to secure rental of the house and failed to establish that she was objectively qualified as a tenant for the property in question. Given these facts, Complainant has failed to establish that she was subjected to housing discrimination on the basis of the race and color of her children and I conclude that Respondent did not violate G.L. c. 151B.

IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final order of the Hearing Officer. 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, 2018


JUDITH E. KAPLAN,
Hearing Officer