

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
ROSANNA DE LA CRUZ

Complainants

v.

DOCKET NO. 15-BPR-02262

JONAS LOUIS and NERLANDE PIERRE

Respondents

Appearances: David Green, Esq. for Complainant
Jonas Louis and Nerlande Pierre, pro se

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 21, 2015, Complainant Rosanna de la Cruz filed a complaint with this Commission alleging that she had been unlawfully denied housing by Respondents, rental agent Jonas Louis and property owner Nerlande Pierre,¹ because of Complainant's sex/pregnancy, children and the presence of lead paint in the property at issue. Complainant was at least six months pregnant at the time of the incidents alleged in the complaint and claims she was denied a rental because of her pregnancy and the presence of lead paint. Respondents denied the allegations of discrimination and stated that no rental agreement or lease was ever signed because neither Complainant nor her husband presented the required

¹ The complaint also named Rudolphe Lubin as a party-Respondent alleging that he was a co-owner of the property Complainant sought to rent. Lubin was dismissed as a party at the hearing based on evidence that he had transferred his ownership interest to Pierre in December 2009 and was not involved in the transactions at issue.

proof of income. Respondent Pierre also alleged that she had never met Complainant and received no monies from the rental agent.

The Investigating Commissioner found probable cause to credit the allegations of the complaint and conciliation efforts were unsuccessful. The case was certified to a public hearing which took place on August 15, 2017 before the undersigned Hearing Officer. Respondents Pierre and Louis appeared pro se. They were permitted to present testimony in narrative form and were cross-examined by Complainant's counsel. Both Complainant and Pierre testified with the assistance of translators.² The Complainant filed a post-hearing brief. Based on the credible evidence presented at hearing and the reasonable inferences drawn therefrom, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Respondent Nerlande Pierre is the owner of the property at 730 Boston St., Lynn MA, which is a two-family owner occupied dwelling. The first floor unit became available for rent in the summer of 2015 when the second-floor tenant vacated the premises and Pierre moved from the first to the second-floor unit. Pierre testified that she works 12-hour days as a nurse's assistant at a hospital in Everett and engaged Jonas Louis as a rental agent to help her rent the apartment. Pierre testified that she is a single mother who is dependent on the rent to pay her mortgage of \$2,200 per month and always requires proof of income from prospective tenants.

2. Respondent Jonas Louis is a licensed real estate broker in Massachusetts and a tax consultant. He testified that he knew Pierre because he assisted her with her taxes and offered to help her rent the apartment.

3. In June of 2015, Complainant's husband saw a For Rent sign in an apartment at 730

² Complainant's first language is Spanish and Pierre's first language is Haitian Creole.

Boston St. in Lynn MA. Complainant testified that her husband, Manuel Emilio de la Cruz, called the phone number on the sign and that they were shown a three-bedroom apartment at the address by Jonas Louis. Complainant testified that she was six months pregnant at the time and living in an apartment on Holland St. in Lynn.³ Complainant testified that she asked Louis if the apartment at 730 Boston Street contained lead paint, and Louis told her it did not. Both Complainant's husband and Louis testified that Complainant was not at the initial showing of the unit.

4. On June 1, 2015, Complainant's husband gave Louis \$2,100 in cash as a deposit to hold the apartment, \$700 of which was a fee for the rental agent. (Ex. 1) The prospective tenants were listed on the receipt as Manuel de la Cruz and Rosanna de la Cruz. *Id.* Mrs. De la Cruz testified they were told the apartment would be available on July 1, 2015. At some later date, her husband gave Louis an additional \$1,400 which was the amount of the monthly rental payment. Mr. De la Cruz testified he gave the additional deposit on the day they signed rental documents. Complainant and her husband claimed that they signed a lease but were not given a copy. No rental agreement or lease was offered into evidence.

5. Complainant's husband Manuel de la Cruz testified that when he saw the For Rent sign at 730 Boston St. he had his twenty-eight year old daughter who speaks better English contact the number on the sign to confirm that the apartment was available. He then arranged with Louis view the apartment along with his adult daughter, but could not recall the date on which that occurred. Mr. De la Cruz testified that his daughter asked Louis if there was lead paint in the apartment and Louis said there was not. Mr. De la Cruz made a

³ A receipt for First Month's Rent, Last Month's Rent and/or Security Deposit offered into evidence by Complainant states her address as 90 Kirtland St., Lynn, MA. There was no explanation offered for this discrepancy.

second appointment for his wife Rosanna to view the apartment and stated that his two other daughters, age fourteen and ten, also accompanied them to the viewing, but there was no discussion of who would be living in the unit. Mr. De la Cruz testified that Louis noted that his wife was pregnant. Mr. De la Cruz denied that Louis told them a lead abatement certificate is required for a landlord to rent to a tenant with children under the age of six.

6. Sometime after this visit, Mr. de la Cruz went to Louis' office in Everett to give him an additional deposit, and Louis requested verification of his employment. Mr. De la Cruz claimed that he gave Louis a copy of his driver's license along with a letter stating that he was employed as a taxi driver in Lynn and the hours he worked. At hearing, Complainant offered a letter from the President of Union Taxi in Lynn stating that Mr. De la Cruz had been a taxi driver since 2012, worked six days a week from 6:00 a.m. to 4:30 p.m., and paid \$90 daily for use of the cab. The letter did not provide Mr. De la Cruz's income from this job and was dated October 23, 2015, some four months after the events in question.

Complainant did not offer any proof of her income because she was not working at the time.

7. Respondent Louis testified that when he agreed to rent the apartment, he asked the owner Pierre if there was lead paint in the house and she told him she did not know. She told him the second floor unit had been rented to a tenant with subsidized housing and had been inspected, but she had no lead abatement certificate for either unit. Louis testified that he later told Pierre he was waiting for income verification from prospective tenants prior to presenting them to her for consideration. The De la Cruz's did not occupy the apartment on July 1, 2015. Mrs. De la Cruz testified that they went to Louis' office again sometime in July to determine if they had secured the apartment and Louis told them that the prior tenants had

not yet moved out.⁴ Complainant stated that she had no further conversation with Louis and she claimed to be unaware that the delay in securing the apartment was due to Louis' awaiting proof of income.

8. According to Louis, he did not meet Mrs. De la Cruz until his third meeting with Mr. De la Cruz . Louis stated that this was the first indication he had that Complainant was a prospective tenant. He testified that he told Mr. De la Cruz's twenty-eight year old daughter during the initial meeting that no one under the age of six should live in the apartment because he did not have a lead abatement certificate.⁵ Upon meeting Mrs. De la Cruz and noting that she was pregnant, he reiterated that there was no lead abatement certificate for the unit. He claimed that under Massachusetts law, he had a responsibility to inform prospective tenants about lead paint and young children. Mr. De la Cruz denied there was any discussion with Louis about who would live in the apartment or about the need for a lead abatement certificate. While Complainant claimed she initiated the inquiry about lead paint I find this highly unlikely because she does not speak English and would have had great difficulty communicating with Louis who speaks with a heavy accent. I find it more likely that Louis spoke about lead paint in his initial discussion with Mr. De la Cruz's daughter and later when Louis met Mrs. De la Cruz, but he did not preclude the De la Cruz's from applying for the unit or being considered as prospective tenants.

9. According to Louis, Mr. De la Cruz returned to his office sometime after their third meeting with payment of the first and last month's rent. While his testimony about the amount of money he received on that date does not entirely comport with the documentary evidence establishing that Mr. De las Cruz paid him \$2,100 on June 1, 2015, I credit the

⁴ This assertion is in direct contravention of Pierre's testimony that the apartment was empty as of May 2015 and remained empty for three months. If Louis in fact said this, it was untrue.

⁵ This testimony comports with Mr. De la Cruz's testimony of the first meeting with his adult daughter.

testimony that Mr. De la Cruz gave him additional monies in July and that Louis was merely uncertain of the amount. According to Louis, Mr. De la Cruz told him he really wanted the apartment, and Louis took the money promising to hold the unit for him. Louis claims he said that as soon as he had verification of Mr. De la Cruz's income, he would present the offer to the owner of the property. Louis stated that he did not reject their application but took the additional monies from Mr. de la Cruz to continue to hold the apartment for him.

10. On or about July 29 or August 1, 2015, Complainant and her two daughters went to the property at 730 Boston St. to determine when they would be able to move in.⁶ Complainant testified that a woman, whom she identified as Pierre, appeared and asked her if she was the party renting the apartment and spoke to her in a gruff manner. Complainant testified that her daughters translated for her during her encounter with Pierre. According to Complainant, upon seeing she was pregnant, the woman asked who would be living there and told Complainant she was going to call Louis.⁷ Complainant testified that Louis subsequently informed her husband that the landlord would not rent to them because she had a prospective tenant who was offering more money for the apartment.⁸

11. A few days later, Louis returned the De la Cruz's deposit. Mr. De la Cruz testified that when he went to retrieve his deposit, Louis gave no reason why the landlord refused to rent to them. I do not find the latter assertion to be credible. Complainant testified that the incident made her feel really bad. Her family remained in their then-current apartment for five more months even though it was too small for a family of five.

12. Respondent Pierre testified that she waited for two months for Louis to obtain proof

⁶ In her complaint, she stated she went to get the keys and a copy of the lease and went with *one* daughter.

⁷ In her complaint, she stated Pierre told *her* to contact Louis. This is consistent with Pierre's testimony

⁸ Complainant's testimony about the reason they were rejected as tenants conflicts with her sworn statement in the complaint that Louis told them they were rejected because she was pregnant. I do not believe that Pierre made any statement about Complainant's pregnancy.

of income from the prospective tenants and communicated with Louis periodically about the delay. She stated that she had not received a rental application, a lease, or any monies from Louis. According to Pierre, when Complainant arrived on her doorstep looking for the keys to the apartment, she had no idea who Complainant was. She told Complainant that since they had never met and since Complainant had signed no agreement or lease, she could not give Complainant the keys. Pierre then called Louis and told him a woman came looking for the keys and she didn't know who the woman was. She told Louis she was ending her arrangement with him because she could not wait any longer for income verification and had to rent the unit because she had a mortgage to pay. She told him to tell the prospective tenants that she could wait no longer for income verification. After ending her arrangement with Louis, she rented the unit herself. I credit her testimony.

13. Louis confirmed that Pierre called him and expressed confusion that a woman she did not know showed up on her doorstep looking for keys to the apartment. According to Louis, Pierre asked why someone would come looking for the keys when Louis had never presented her with a rental application or lease. Louis stated that since he had yet to receive proof of income from Mr. De la Cruz, and was no longer acting as Pierre's agent, he had no choice but to inform Mr. De la Cruz and arrange to return his deposit.

14. Pierre testified that Louis did not inform her that the prospective tenant was pregnant but even if he had, the information would not have concerned her. According to Pierre, the previous tenants who occupied the second floor unit had a young child, and because they were the recipients of subsidized housing, the unit was inspected annually.

15. Pierre testified that she had moved into the first floor unit when her daughter was

four years old and was told by the prior owner that young children had lived in the unit before she moved in. She does not know if the property was inspected for lead paint prior to her purchasing it, but she does not have a lead abatement certificate for either unit and has no knowledge of whether the unit in question contains lead paint.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 151B s. 4 (11) makes it an unlawful practice for an owner of other covered housing or a real estate broker to refuse to rent or lease such accommodations because a prospective tenant has child or children who will occupy the premises. M.G.L. c. 111, s. 199A makes it an unlawful practice to refuse to rent accommodations because the premises may contain lead paint and the statute authorizes the filing of a complaint pursuant to s. 5 of c. 151B for violations thereof. M.G.L. c. 151B s. 4 (7B) makes it unlawful for any person to make, print or publish a statement that indicates any preference, limitation or discrimination in housing based on membership in a protected class, including gender and the presence of children as tenants. Complainant claims she was denied rental housing by the Respondents because of her pregnancy and because a child under the age of six was a prospective tenant.

To establish a prima facie case of discrimination based on children, the presence of lead paint, and gender, the Complainant must demonstrate that (1) she is a member of a protected class; (2) she attempted to apply for an apartment for which Respondents were seeking applicants, (3) she was objectively qualified to rent the housing and (4) she was deterred from applying or rejected under circumstances which give rise to an inference of unlawful

discrimination based on her protected class. See Wheelock College v. MCAD, 371 Mass. 130 (1976); Brennan v. Hong, 31 MDLR 29 (2009); Smith v. Cao, 29 MDLR 179 (2007)

The testimony presented at hearing is that Mr. De la Cruz and his adult daughter were initially shown the apartment at 730 Boston Street by Louis and thereafter Louis accepted a deposit from Complainant's husband. Mr. De la Cruz testified that during their first encounter, his daughter asked about the presence of lead paint and Louis assured her there was no problem.⁹ Louis admits that there was some discussion about lead paint and the absence of a lead abatement certificate. Louis did not meet Complainant until sometime later and stated he remained confused about the identity of the prospective tenants. He testified that upon noting Complainant's pregnancy, he stated that, as a broker, he cannot rent premises to tenants with children under the age of six if the property does not have a lead abatement certificate. This purported statement by Louis is the only exchange between the parties referencing children or Complainant's pregnancy.

The De la Cruz's testified there was no discussion with Louis in their later meeting about who would occupy the apartment or about lead paint. Given Louis' testimony, their denial is confounding since it is inimical to their claim in this matter. If Louis did indeed make the statement that he could not rent to a tenants with children under the age of six without a lead abatement certificate, it is an admission against his interests since such a statement is a presumed violation of s. 4(7B) of c. 151B. It is also an incorrect statement of the law which does not permit rejection of tenants with children, but rather, places an affirmative obligation on property owners to ensure the abatement of lead paint.

However, even if Louis did make the comment he claims to have made, it is noteworthy that he did not terminate the rental transaction with the Mr. De la Cruz. Rather, Louis

⁹ Mr. De la Cruz's daughter was not present and did not testify at the hearing.

accepted a further deposit from Mr. De la Cruz after that meeting, representing that he, Louis, would hold the apartment for De la Cruz pending income verification. Thus, I conclude that Complainant's right to apply and be considered for the unit was not adversely affected, nor was she injured by any statement by Louis. In fact, Complainant presumed that she had been accepted as a tenant, as evidenced by her attempt to obtain the keys to the unit at the end of July.

More importantly, there is a significant dispute about whether Complainant provided income verification to demonstrate that she was objectively qualified to rent the apartment. Mr. De la Cruz testified that he provided a document to Louis stating that he drove a taxi six days a week, paying \$90 a day for use of the cab, but the document does not make any representation about his income. The document submitted at the hearing containing this information was dated several months after the events at issue. Accordingly, it can be argued that Complainant did not sufficiently demonstrate that she was objectively qualified to pay the \$1,400 per month rental since Respondents had no information regarding the amount of the family's income.

However, presuming that Complainant established a prima facie case, it is incumbent upon Respondents to articulate a legitimate non-discriminatory reason for the rejection. See Blare v. Husky Injection Molding Sys. Inc., 419 Mass. 437, 441-442 (1995) Both Respondents testified that Mr. De la Cruz's failure to provide verification of his income motivated termination of the rental transaction. Louis did not initially reject Complainant's application; in fact, he held the transaction open for two months. There is no reason for him to have done this were he not awaiting verification of income. Had Louis been motivated to terminate the transaction because of concerns about Complainant's pregnancy, he more than

likely would have done so upon meeting Mrs. De la Cruz and would not thereafter have accepted a further deposit from Mr. De la Cruz or have continued to hold the apartment for him.¹⁰

Pierre testified that she did not refuse to rent to Complainant. She merely referred Complainant to her agent because she had not met Complainant and had not received an application, or received a deposit from Louis. Pierre credibly denied having any information about Complainant's pregnancy prior to their brief exchange at the property and credibly asserted that she did not believe lead paint to be an issue since her child and the previous owner's young children had lived in the unit. In sum, both Respondents offered a legitimate non-discriminatory reason for terminating the rental transaction and returning the De la Cruz's deposit.

Once Respondents articulate a legitimate non-discriminatory reason, 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 she was rejected for a tenancy after the property owner Pierre met her and saw that she was pregnant. She claims that given Louis' assurances that the apartment would be theirs, her pregnancy must have been the reason for the denial. While on its face, this seems like a reasonable assumption, I am not persuaded that this was the case.

¹⁰ In the complaint, Complainant states she met Louis on June 1st. If this is to be believed, Louis delayed the transaction for some two months after knowing Complainant was pregnant. He also claims to have known in June that there was no lead abatement certificate. If Louis did not meet Complainant until sometime later, as he contends, her pregnancy would not explain the initial delay in consummating the rental transaction.

Pierre testified credibly that she referred Complainant to Louis because Complainant was unknown to her and because Pierre had received no application or deposit from Louis. According to Pierre, she was shocked that a stranger came knocking at her door asking for keys to the apartment, was unaware of any lead paint in the unit, and did not believe lead paint to be an issue. I credit her testimony that she did not discuss Complainant's pregnancy with Louis and did not reject Complainant as a tenant because she was pregnant.

At the hearing, Complainant testified her husband was told by Louis that the reason for the rejection was that the owner found someone who would pay more. Since Complainant never spoke to Louis, her testimony on this material issue is bewildering. It does not comport with her husband's testimony that Louis gave no reason, and it directly contradicts her sworn statement in the complaint that Louis told her husband they were rejected because of her pregnancy and the presence of lead paint. There were sufficient inconsistencies between Complainant's and her husband's testimony to render their versions of events less than credible. They did not present a consistent and coherent story. Mr. De la Cruz had a very vague memory of his conversations with Louis and of the sequence of events.

In sum, the evidence does not support Complainant's testimony about the purported reasons for the rejection. In light of the facts and permissible inferences, it stands to reason that failure to submit proof of income was the real reason for the denial. Assuming that Mr. De la Cruz did provide a letter from his employer to Louis similar to the October 2015 document, the letter merely stated that he was employed as a taxi driver and that he paid \$90 per day of use of the cab. This was insufficient information from which to determine whether he could afford to pay the rent of \$1,400 per month. Complainant did not work and had no income. The family had two children and was expecting a third child. Considering

that the landlord required proof of sufficient income, the letter provided by Mr. De la Cruz did not suffice to establish that Complainant was financially qualified to rent the apartment.

Turning to the testimony provided by Louis, even though he expressed his view that a broker had a responsibility not to rent to tenants with children under the age of six absent a lead abatement certificate, he did not refuse to process the De la Cruz's application. Louis did not waiver from his position that the transaction was delayed and ultimately terminated because the De la Cruz's failed to provide income verification. I conclude that the rental transaction was indeed terminated because Pierre could not afford to wait any longer for income verification and that the unwarranted delay also caused her to terminate her agency arrangement with Louis.

I can only presume that some of the unexplained discrepancies in this matter may have resulted from the significant language barrier between the parties. Complainant and Pierre do not speak English. Complainant's husband has limited facility with English and Louis speaks with a heavy accent and is difficult to understand. Some confusion may have ensued because of Louis's failure to communicate more effectively with the De la Cruz's and Pierre. This failure likely accounted for Complainant showing up unannounced at Pierre's doorstep looking for keys. Given all of these considerations, I conclude that Respondents are not liable for unlawful refusal to rent to Complainant in violation of G.L. c. 151B ss. 4(7) and (11).

Notwithstanding the above, Louis is liable for a violation of G. L. c. 151B s. 4(7B). Louis admits he made statements to Complainant that indicated a preference or limitation based on Complainant's protected classes. His assertions were likely based on a mistaken or incorrect interpretation of the law. While the potentially discriminatory statements did not

deter Complainant and her husband from applying for the unit and did not prevent consideration of their application, the mere iteration of the statements is a violation of the law. There is no evidence that Complainant suffered any injury as a result of this statement and she is therefore not entitled to damages. Louis, however, is subject to a cease and desist order and a requirement that he be trained further in his responsibilities as a broker with respect to discrimination relating to children and lead paint.

V. ORDER

In light of the foregoing findings and conclusions, it is hereby ordered that:

- (1) The complaint against Respondent Nerlande Pierre be dismissed;
- (2) The complaint against Respondent Jonas Louis based on violations of G.L. c 151B ss. 4(7) and (11) be dismissed;
- (3) Jonas Louis shall cease and desist from making any discriminatory statements in violation of G.L. c. 151B s. 4(7B)
- (4) Jonas Louis shall enroll within three (3) months of this Order in a housing training course addressing his obligations as a broker in relation to issues of lead paint and discrimination against tenants with children. Louis shall report to the Commission the date of such training, the party conducting the training and submit to the Commission the agenda for the training.

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 31st day of January, 2018.

A handwritten signature in cursive script, reading "Eugenia M. Guastaferrri".

Eugenia M. Guastaferrri
Hearing Officer