

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD & MELISSA DERUSHA,  
Complainants

v.

DOCKET NO. 08-SPR-01116

FEDERAL SQUARE PROPERTIES &  
PACIFIC LAND, LLC,  
Respondents

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Appearances: Jane L. Edmonstone, Esquire for Complainant, Melissa Derusha  
James Soffan, pro se, for the Respondents

I. PROCEDURAL HISTORY

On May 28, 2008, Complainant Melissa Derusha filed a complaint with this Commission charging Respondents Federal Square Properties with discrimination in housing on the basis of her receipt of public assistance (Section 8 housing) gender and marital status. The complaint was subsequently amended to add Pacific Land, LLC as a named Respondent. The Investigating Commissioner dismissed the gender and marital status claims and issued a probable cause finding with respect to the public assistance claim, which is the sole claim now before the Commission. Specifically, Complainant alleges that Respondents deterred her from renting an apartment because of her status as a Section 8 recipient. Attempts to conciliate the matter failed and the case was certified for public hearing. A public hearing was held before me on December 9, 2011. After careful consideration of the entire record in this matter, I make the following findings of fact, conclusions of law and order.

## II. FINDINGS OF FACT

1. Complainant Melissa Derusha was born and raised in Worcester, MA. She currently resides in La Vista, Nebraska with her boyfriend and her 10 year old child. In July 2007, Complainant lived in Worcester, MA, with her then six year old child, in an apartment in a six-unit building on Columbia Street. Complainant held a Section 8 housing voucher administered by the Westfield Housing Authority.

2. Respondent Pacific Land, LLC owns the premises at 590 Main Street in Worcester, also known as the Colton Building. The building consists of 45 rental units consisting of studios, and one and two-bedroom apartments. The rents range from \$640 to \$950 per month.

3. Respondent Federal Square Properties, Inc. (“Federal Square”) manages the building located 590 Main Street. James Soffan is president and sole owner of Federal Square, which also manages other residential and commercial properties. Federal Square receives compensation from Pacific Land, LLC in exchange for managing the premises at 590 Main Street. Soffan is a licensed real estate agent and broker. Soffan stated he represented the interests of both Pacific Land and Federal Square at the public hearing.

4. Beth Lyons has worked at Federal Square Properties since 2006. She performs bookkeeping duties, shows apartments, facilitates the application process with prospective tenants, answers phone calls and supervises the maintenance staff. Soffan is Lyons’ direct supervisor. After Lyons receives a rental application from a prospective tenant, she usually reviews it with Soffan.

5. Lyons testified that Respondents have rented to many tenants who receive subsidies from local agencies, including HOAP, Community Health Link and Alternatives, but that until July 2007, Respondent had never had an inquiry about Section 8 housing.

6. Complainant moved into a six-unit building at 27 Columbia Street, Worcester in 2006. She testified that initially she loved the apartment because it was quiet and convenient. However, when the building was sold, the new owner rented to tenants who used drugs and engaged in fights on the premises. Despite her complaints, the new landlord did not adequately address the issue of tenants' drug use in her building. Complainant's living situation became stressful and unsafe and she began seeking a new apartment in March 2007.

7. In July 2007, Federal Square was advertising apartments for rent at the 590 Main Street property. In July 2007, Complainant called Federal Square at the number listed in the ad and inquired about renting an apartment. She spoke to a woman, later identified as Beth Lyons. Complainant asked Lyons about the monthly rents and utilities. She determined that the apartments met her criteria and asked to see a unit. Complainant then mentioned that she had a Section 8 certificate and Lyons responded that Respondent did not accept Section 8.

8. Beth Lyons testified that she recalled receiving several calls about Section 8 in the summer of 2007. She testified that, on Soffan's advice, she told callers who inquired about Section 8 that Respondent was not accepting Section 8 subsidies at that time.

9. James Soffan testified that in 2007 Federal Square advised potential renters that it did not accept Section 8 vouchers. He stated that at the time he believed Respondents were required to undergo a certification process by the housing authority before being approved as a Section 8 landlord. He stated that Respondents were not refusing to rent to Section 8 tenants as a matter of

policy, but were simply not accepting the subsidy “at this time.” Soffan testified credibly that at the time, Respondents accepted tenants with other types of subsidies, which were administered differently through local agencies that were not local housing authorities. Soffan testified that Respondents currently accept Section 8 subsidies.

10. Carla Halpern was the testing coordinator employed by Community Legal Aid in July 2007. Halpern testified that she developed the agency’s testing program methodology and training program which is approved by HUD. She testified that her program conducted an investigation of Respondents’ practices using testers.

11. From July 2007 through October 2007, Halpern assigned six testers to pose as potential tenants. They were instructed to call Federal Square about an advertised apartment. Three testers posed as Section 8 voucher holders while the other three did not have subsidies.

12. In the first set of tests, the tester with the Section 8 voucher called Federal Square on July 26, 2007 and asked if they accepted Section 8 and was told that they did not. The tester asked again about Section 8 and Lyons responded that she had never dealt with Section 8 vouchers but was willing to show the apartment to the tester. The tester asked for an appointment to see the apartment and was later shown the apartment by Lyons. The tester and Lyons exchanged voice mail messages during the following two weeks and Lyons ultimately told the tester that the apartment was rented. (Ex. C-1; C-2; testimony of Halpern)

13. In the second set of tests, the tester with the Section 8 voucher called Federal Square Properties on August 2, 2007 and inquired about a two-bedroom apartment. Lyons stated that Respondent had an available apartment. Complainant stated that she had a Section 8 voucher

and Lyons replied that tenants with Section 8 were not being accepted at that time. (Ex. C-3; C-4; testimony of Halpern)

14. In the third set of tests, the tester with the Section 8 voucher called Federal Square Properties on October 29, 2007. The tester and Lyons discussed the application process and Lyons offered to set up an appointment to view the apartment. The tester and Lyons set a date to view the apartment and the tester asked if she should bring her Section 8 documents to the appointment. The agent responded that they were not taking Section 8 tenants at the time. (Ex. C-5; C-6; testimony of Halpern)

15. Complainant testified that after Lyons told her that Respondent was not accepting tenants with Section 8 subsidies, she was angry and frustrated. She stated she felt she was being judged and felt like trash because she received a rental subsidy.

16. Complainant testified that the situation at her building worsened and she witnessed a stabbing in the building. She stated that as a result of her stressful living situation, she suffered from insomnia and weight loss, became depressed and reclusive, and feared for her and her daughter's safety. She stated she did not want her daughter to attend the neighborhood school and that she slept with a knife under her pillow for fear that someone would break into her apartment. I do not credit this testimony and believe Complainant significantly exaggerated the circumstances of her living situation at Columbia Street.

17. Complainant testified that subsequent to her conversation with Lyons, she only inquired about four other advertised units in Worcester and did not move into a new apartment until July 2008, a year after her conversation with Lyons.

18. Complainant testified that in June 2008 she found a two-bedroom apartment on Bowdoin Street in Worcester where she could use her Section 8 voucher. She moved into the apartment with her daughter and her boyfriend. They lived there until February 2010 when they all moved to her boyfriend's home state of Nebraska where he had been offered a better job opportunity. They continue to reside in Nebraska.

### III. CONCLUSIONS OF LAW

#### A. Housing Discrimination under M.G.L.c. 151B§4(10)

M.G.L. Chapter 151B, §4(10) makes it unlawful for any person "furnishing rental accommodations to discriminate against anyone who is a recipient of federal, state or local housing subsidies ... including rental assistance or rental subsidies because such individual is such a recipient or because of any requirement of such ... rental assistance or housing subsidy program."

In order to establish a prima facie case of housing discrimination, under §4(10) Complainant must 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); MCAD & Teresa Smith v. Thiet V. Cao, 29 MDLR179, 180 (2007); MCAD & Belinda Williams v. Melvin Lee Hardy, 23 MDLR 292,295 (2001); Garay v. Soumas, 13 MDLR 1065, 1081-82 (1991); French v. Krajewski, 12 MDLR 1056 (1990)

Complainant may establish a violation of the statute by direct or indirect evidence. In this case, Complainant has presented direct evidence of discrimination. Complainant possessed a

valid Section 8 voucher, and when she called the office of Respondent Federal Square Properties in response to an advertisement for available apartments she was told by Beth Lyons that they did not accept Section 8. Therefore, I conclude that Complainant has established a prima facie case of housing discrimination pursuant to M.G.L.c.151B §4(10).

Once Complainant establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason for its action. See Wheelock College v. MCAD, 371 Mass. 130 at 136 (1976). Federal Square, the management company and agent for the owner of the property, Pacific Land, LLC, acknowledged having a policy of not accepting Section 8 tenants at the property in question at the time of Complainant's inquiry. Respondent Federal Square asserts that, notwithstanding its policy, it is not liable for discrimination because its policy was not motivated by discriminatory animus against holders of subsidies but resulted from its mistaken belief that it had to be certified to qualify as a Section 8 landlord.

Respondent's argument is without merit and not credible. Soffan was a licensed real estate agent and broker, managed a large property and knew or should have known about the requirements of Section 8, a large and established rental subsidy program. Refusal to accept tenants with Section 8 subsidies because of concerns about the requirements of the program is not a valid defense to a discrimination claim. MCAD & Smith v. Thiet v. Cao, 29 MDLR 179 (2007); DiLiddo v. Oxford Street Realty, Inc., 450 Mass. 66 (2007). Likewise Respondent's defense that it rented to tenants with other types of rental subsidies does not relieve them of liability for refusing to accept Section 8 subsidies. I conclude that Federal Square has failed to articulate a legitimate, non-discriminatory reason for its policy of not accepting Section 8 tenants and I conclude that Federal Square Properties engaged in unlawful discrimination pursuant to M.G.L.c.151B§4(10).

B. Discriminatory Statements under M.G.L.c. 151B§4 (7B)

It is unlawful for any person to make “print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of multiple dwelling, contiguously located, publicly assisted or other covered housing accommodations that indicates any preference, limitation, or discrimination based on...public assistance reciprocity or an intention to make any such preference, limitation or discrimination except where otherwise legally permitted.” M.G.L.c. 151B§4 (7B) I conclude, based on the un rebutted evidence, that Federal Square violated G.L. c.151B §4(7B) because of Lyons’ statement to Complainant that Federal Square did not accept Section 8 tenants.

The evidence demonstrates that Lyons was directed to make this statement by Soffan, the President and sole owner of the management company, Federal Square. This policy was also clearly sanctioned by Soffan. Respondent, Federal Square is liable for the statements made by Lyons at Soffan’s direction and with his approval. Lyons was acting within the scope of her authority and pursuant to Soffan’s direction. Therefore Federal Square Properties is liable pursuant to G.L. c. 151B s. 4(7B) for discriminatory statements to Complainant and the Legal Aid program testers.

C. Liability of Pacific Land, LLC

The duty to comply with fair housing laws and to ensure equal access to housing may not be delegated by a property owner. Marr v. Rife, 503 F.2d 735 (6th Cir. 1974); U.S. v. Real Estate Development Corp., 347 F.Supp. 776 (N.D. Miss. 1972); U.S. v. L. & H. Land Corp., 407 F.Supp. 576 (S.D. Fla. 1975); Baker v. Collazo, 4 MDLR 1421 (1982). This is because the right of equal access to housing is an important one. Respondent Pacific Land’s duty to prospective



tenants extends beyond its duty to obey the fair housing laws with respect to its own personal actions. As owner of the property in question, it has a non-delegable duty to ensure that any interested party is considered for tenancy without regard to his or her membership in a protected class. Baker v. Collazo, supra. at 1434. Respondent Pacific Land LLC, as the owner of the property, is also liable for violation of M.G.L. c. 151B§4 (7B) under an agency theory. Principals may be held liable for the discriminatory acts of their agents that are committed within the agent's scope of authority. Rome v. Transit Express, 19 MDLR 159, 160 (1997), citing O'Leary v. Fish, 245 Mass. 123, 124 (1923). An agency relationship is established where the principal indicates to the agent that he or she consents to having the latter act on his or her behalf, and the agent similarly consents to act for the principal. Luna v. Lynch, 7 MDLR at 1720. Federal Square was acting as the agent for Pacific Land. I therefore conclude that Respondent Pacific Land, LLC is liable for unlawful discrimination pursuant to M.G.L.c.151B§4(7B) and (10).

For all the reasons discussed above, I conclude that Respondents are jointly and several liable for violating G.L.c.151B §4(7B) and §4(10).

#### IV. DAMAGES

##### A. Emotional Distress

Upon a finding of unlawful discrimination, the Commission is authorized to grant remedies to effectuate the purpose of M.G.L.c.151B and to make the Complainant whole. Bournewood Hospital v. MCAD, 371 Mass. 303, 315-6 (1976).

This includes an award of damages to Complainant for emotional distress suffered as a direct and probable consequence of her unlawful treatment by Respondents. Bowen v.

Colonnade Hotel, 4 MDLR 1007 (1982), citing Bournewood Hospital v. MCAD, 371 Mass. 303, 316-317 (1976); See Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997). Complainant testified that after Lyons told her that Respondents did not accept Section 8, she felt angry and frustrated, unfairly judged, anxious and agitated.

While I conclude that Complainant was upset at having been unlawfully deterred from applying for an apartment, I am not persuaded that she suffered any significant emotional harm, nor am I convinced that Complainant's living situation was as precarious as she claimed. I found her testimony in this regard to be largely exaggerated, and not credible. I conclude that if Complainant's living situation were as desperate as she claimed, she would have made greater efforts to seek alternative housing. She claims to have contacted only four potential landlords in Worcester in the year following her telephone conversation with Lyons, despite her assertion that her living conditions were so unsafe that she did not want her daughter attending the neighborhood school. Her minimal efforts to secure alternative living arrangements are at odds with her testimony regarding her living conditions. I am persuaded that Complainant exaggerated the hazards of her living situation in order to enhance her claim for emotional distress damages. Based on the foregoing, I conclude that Complainant is entitled to a de minimus award of \$500.00 for emotional distress.

#### B. Civil Penalty

Massachusetts General laws, Chapter 151B, §5 states, in part, "If, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a

civil penalty against the respondent: (a) in an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice."

Having found that Respondents violated G.L.c.151B §4(7B) & 4(10) over a period of time in which it rejected prospective tenants who possessed Section 8 subsidies and explicitly stated a policy of not accepting Section 8 tenants for reasons that I found to be not legitimate and non-discriminatory. I conclude that a civil penalty against each Respondent in the amount of \$5,000 is warranted.

#### V. ORDER

For the reasons stated above, it is hereby ORDERED that:

1. Respondents cease and desist from discriminating against prospective tenants who possess Section 8 subsidies and continue the stated current policy of compliance with M.G.L. c.151B §4(10) by accepting otherwise eligible tenants who are recipients of public assistance, including Section 8.

2. Respondents cease and desist from making any discriminatory statements or stating preferences with respect to acceptance of rental subsidies in its properties in its advertising or in statements to prospective tenants, and adopt a written policy statement for display in their rental offices stating that they accepts Section 8 and other government housing subsidies.

3. Respondents pay to Complainant Melissa DeRusha the sum of \$500.00 in damages for emotional distress, with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

4. Respondent Federal Square Properties pay to the Commonwealth of Massachusetts the sum of \$5,000 as a civil penalty.

5. Respondent Pacific Land, LLC pay to the Commonwealth of Massachusetts the sum of \$5,000 as a civil penalty.

SO ORDERED, this 9th day of April, 2012

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JUDITH E. KAPLAN,  
Hearing Officer