

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
KEISHA WILLIS,
Complainants

v.

DOCKET NO. 08-BPR-03012

ALFRED DEFAZIO,
Respondent

Appearances: Caitlin A. Sheehan, Esq. Commission Counsel for Complainant
Mark W. Bartolomei, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 17, 2008, Complainant, Keisha Willis, filed a complaint with the Massachusetts Commission Against Discrimination charging Respondent, Alfred DeFazio with discrimination in housing on the basis of race and color in violation of G.L. c. 151B, §4(6). The complaint also alleged discriminatory statements in the HUD portion of the complaint. See Ex. J-1. The Investigating Commissioner found probable cause to credit the allegations of the complaint and also found probable to proceed on a

claim of discrimination based on discriminatory statements made by Respondent in violation of c. 151B, § 4(7B). See Ex. J-3.¹

Complainant alleges that she is an African American female; that she is a real estate broker; and that upon contacting Respondent for information about a unit he was renting to inquire if she could list it, Respondent informed her that he would not rent those “Africans,” including African Americans. After Complainant identified herself and asked if Respondent would rent to her, he stated that he did not rent to blacks, but if he were going to rent to her he would demand “a hell of a lot of money up front,” and went on to state additional deposits he would require.

Efforts at conciliation were unsuccessful and a hearing was held before the undersigned hearing officer on June 22, 2011. The parties filed post hearing briefs in August, 2011. Having reviewed the post-hearing submissions of the parties and the record in this matter, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Keisha Willis, is an African American female who resides in Newton, Massachusetts. (Testimony of Complainant, Ex. J-1)

2. Respondent, Alfred DeFazio is a property owner and landlord who owns properties at 35 and 35R Butts Street, which is a duplex, and at 36-38A Saco Street, all in Newton, Massachusetts. Respondent testified that he resides at 35 Butts Street. Respondent has owned rental property since the early 1970’s and in the past, he owned 23 units in Amesbury, Massachusetts. He sold the majority of his rental properties in

¹ The evidence adduced at the hearing in this matter supports a claims of discrimination in violation of § 4(7B) of c. 151B.

2007-2008. He testified that he rarely uses the services of real estate agents to rent his properties. (Testimony of Respondent) At the time of the incident in question Respondent was 77 years old and claimed to have health issues, which made it difficult for him to sleep. (Ex. J-3)

3. Complainant is a real estate broker licensed in 2004 or 2005. She is self-employed and has a partner in Trust Realty One, Needham, MA. Complainant's business is residential and commercial leasing and sales. (Testimony of Complainant, Ex. J-1)

4. Complainant obtains new real estate listings that are for sale or rent by owner, primarily through services and opportunities such as Craigslist. She contacts owners to see if they are willing to work with a broker. If the owner agrees she markets the property mainly through on line advertising at sites such as Craigslist, Zillow, and MLS. She obtains a commission from the owners or sometimes the renters. (Testimony of Complainant)

5. In October of 2008, Complainant saw an advertisement for a property for rent by owner on Craigslist. The owner of that property is Respondent, DeFazio. In her complaint, Complainant identified the listed property as being located at 36-38 Saco Street in Newton, MA. (Ex. J-1) The Respondent identified the property he listed for rental on the internet as being 35R Butts Street, Newton, Massachusetts, which he stated is attached to his primary residence, and is a two-family owner occupied property. (Ex. J-3) The 36-38 Saco Street property, which is a three-family dwelling is next door to the Butts Street property. (Testimony of Respondent)

6. On October 7, 2008, Complainant contacted Respondent to see if he would be willing to work with a broker. She stated that Respondent was initially pleasant and gave her the address of the property and described the unit. He told Complainant that he required only first month's rent up front and agreed that she could market the property and told her she could bring tenants to show them the apartment. Complainant testified that near the end of their conversation Respondent stated she shouldn't bring any of "those Africans" around because they were "loud" and it was "difficult to get them out." When Complainant asked if he was speaking about African Americans, he reiterated that he wanted no blacks at the property. (Testimony of Complainant) I credit Complainant's testimony.

7. Respondent denied that he ever discussed hiring Complainant in her capacity as a real estate agent, but I do not credit this testimony. I believe Complainant's testimony and his own admission that is consistent with her testimony, that he told her to bring prospective tenants down to see the property. Respondent recalled the conversation with Complainant and admitted at the hearing that "I told her I'd prefer not to have blacks, because I've had previous experience with them, and they didn't pay and they did more damage, and I'd be fighting with the neighbors every day..." (Testimony of Respondent)

8. Once Respondent had made these comments to Complainant, she told him that she was African American, that she was a professional who owned her own real estate firm, was not noisy, and asked if that meant he wouldn't rent to her. (Testimony of Complainant, Ex. J-1)

9. In response to her inquiry, Respondent stated, "for you sweetheart, I'll have to charge more rent," and told her he would require first and last month's rent and a security

deposit. After asking Respondent to confirm this, Complainant thanked him, said she'd be touch and ended the phone call. Complainant never spoke to Respondent after that call. (Testimony of Complainant) I credit this testimony.

10. Respondent ultimately rented the unit in question to individuals from Peru.
(Testimony of Respondent)

11. Complainant testified that she sought the listing because it would be easy to show since she lived close by, the price was fair, and there were no up-front costs. The conversation with Respondent made her feel very uncomfortable and unwelcome in the nearby neighborhood she had recently moved to. She began to wonder how her neighbors were looking at her and if they felt the same way about African Americans living in their neighborhood as Respondent. Complainant testified she was very shaken up at the time and the incident affected her work and her ability to call landlords for listings. For a few months she felt depressed and frequently thought about the incident. Complainant stated that she believes it is very unfortunate that someone can feel this way about race in this day and age and that Respondent's statements were very hurtful and demeaning. She contacted HUD immediately, because she knew Respondent's conduct was unlawful. (Testimony of Complainant) I found Complainant's testimony very credible and convincing and believe that she was quite shaken and distressed by Respondent's comments which impacted her ability to effectively perform her job as a real estate broker.

12. Marcia Shannon, a former housing investigator at the MCAD was assigned to investigate Complainant's charges. She testified that she spoke to Respondent on the telephone and that during their phone conversation, Respondent admitted to her that he

had made discriminatory statements to Complainant. (Testimony of Shannon) In a letter to Ms. Shannon dated October 28, 2008 Respondent also admitted telling Complainant about “the problems I have had in the past renting to African Americans.” (Ex. J-3) In this letter he also states that he told Complainant he “wanted a letter signed by the tenants that all damages would be paid for,” but did not tell Complainant he would not show her the apartment. (Id.) Ms. Shannon testified that she spoke to Respondent’s daughter later that same day because his remarks were so blatantly discriminatory that she wanted to give him the opportunity to “recant, or fully understand what he said.”² (Testimony of Shannon) Respondent’s daughter admitted to Ms. Shannon that her father made the discriminatory statements, that that was the way he was, and even though she told him he couldn’t do that, he was “set in his ways.” I credit Ms. Shannon’s testimony.

13. Respondent testified that he has rented apartments to diverse individuals since he has owned rental property, including individuals of Spanish-Puerto Rican origin, African Americans, Brazilians, Columbians, Iranians and Mexicans. He also stated that he rented to tenants who qualified for Section 8 housing subsidies. He testified that he never collected last months rent or security deposits from tenants and that his primary concern was to make sure that the rent was paid on time every month. In Amesbury, he used his manager/maintenance person to rent the properties. While I have no reason to doubt some of this testimony, Respondent was unable to identify a single African American he had rented to beyond his general statement that he had had problems with such tenants.

² There is some disagreement among Ms. Shannon, Respondent and his daughter as to whether the conversation (s) between them took place on the same day or on two successive days. However, all of the agree that the conversation(s) in fact took place.

III. CONCLUSIONS OF LAW

A. Discriminatory Statements

Pursuant to Massachusetts General Laws c. 151B §4 (7B), it is an unlawful practice for any person to make print or publish, or cause to be made printed or be 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 race...except where otherwise legally permitted.” While two-family owner occupied dwellings are in some circumstances exempted from the certain provisions of G.L. c. 151B, there is no exemption for two family owner-occupied dwellings in that portion of the statute dealing with “discriminatory statements.” The fact that there is no such exemption is expressly codified in the Commission’s regulations at 804 C.M.R. 2.10(4), Property Not Covered By M.G.L. c. 151B, s. 4, “[t]he leasing or rental of units in those two family homes in which the owner occupies one apartment of that home as his residence is not covered by this law unless: ...(c) The availability of such unit is made known by making, printing, publishing, or causing to be made printed or published any notice, statement, or advertisement with respect to the rental of such a unit that indicates any preference, limitation, exclusion or discrimination based upon race...” (emphasis added) It is clear that the statute’s coverage contemplates the type of statement made by Respondent indicating his express intent to exclude African Americans as tenants in his property.

Commission precedent also establishes that there need not be a separate cognizable claim under G.L. c. 151B in order for a violation of §4(7B) to be charged. See Rodriguez et al. v. Price et al., 32 MDLR 119, 122 (2010) (rejecting Complainant’s claim

of discrimination based on public assistance under G.L. c. 151B §4(10) because she did not establish she possessed a Section 8 housing subsidy, but finding Respondents liable nonetheless pursuant to § 4(7B) for discriminatory statements that they did not accept Section 8 tenants) The Respondent argues that because Complainant was not seeking to rent the property at issue for herself, and was not rejected as an applicant, that the housing discrimination statute is not implicated. The Respondent also argues that because the property in question was a two-family dwelling occupied by the owner, that the provisions of §4(6) do not apply. However, the Commission has rejected such a notion and made it clear that the statute contemplates an independent claim under §4(7B) for discriminatory statements regardless of whether the housing is covered by other sections of the statute and regardless of whether the Complainant was a bona fide applicant who was denied the opportunity to rent housing.

It is undisputed that Respondent told Complainant that he did not want to rent to African Americans.³ At the hearing, he admitting making the statement to Complainant and a Commission investigator confirmed that he made similar statements to her during the investigation. Respondent attempted to justify his statements by articulating what he apparently viewed as a legitimate reason for excluding blacks, stating that in his experience, they were “loud,” it was “difficult to get them out,” they didn’t pay and they did more damage. He then went on to add, “they were not welcome in the neighborhood,” and he did not want to be fighting with the neighbors. Moreover, Respondent told Complainant that if she wanted to rent his unit she would have to pay more upfront because she was African American. Respondent cannot rely on a bad

³ There is some dispute over whether the term Africans, African Americans or blacks was used, but it is clear that Respondent indicated an intent to exclude tenants based on race.

experience with a black tenant to justify excluding all prospective tenants of that race. This is precisely the kind of stereo-typing and discriminatory statement that the statute prohibits. Complainant has proven a violation of c.151B on the basis of discriminatory statements indicating a bias against renting to individuals of a particular racial group, and articulating more restrictive terms and conditions for renting to individuals in that group.

B. Complainant's Standing

Complainant has standing to bring a complaint in this matter and has demonstrated that as a member of a protected class, she was injured by Respondent's discriminatory statements. There is longstanding precedent for a third party's standing to bring a race discrimination complaint, even when they were not personally seeking housing. See e.g. Barrett and Graham v. Realty World/Danca Realty, 17 MDLR 1665, 1678 (1995) citing Havens Realty Corp. v. Coleman, 455 U.S. 363, 372 (1981). In Barrett a realty company was found liable for race discrimination in housing against both the actual prospective tenant and the tester engaged by a civil rights advocacy group to pose as an individual seeking housing, and both were awarded damages for emotional distress. I conclude that the tester and real estate agent's positions are analogous: although neither is personally searching for housing, each is engaged in determining the availability of housing, including for members of protected classes. Real estate agents and brokers are vital conduits for both locating housing and ensuring that housing is made equally available to all prospective home seekers who are qualified. They have a duty to ensure that housing is not withheld for discriminatory reasons and to not be complicit in any such violations of the law. While in this case, Complainant was not a

bona fide home seeker, Respondent's blatantly discriminatory statements and articulation of more restrictive and onerous terms and conditions for renting to African Americans, caused Complainant injury in her role as real estate agent and as a member of a protected class.

IV. REMEDY

Pursuant to G.L. c. 151B, the Commission is authorized to award damages to make the Complainant whole. This includes damages for emotional distress that is sufficiently linked to the unlawful discrimination. Stonehill College v. MCAD, 441 Mass. 549 (2004). Factors to consider when assessing compensation for emotional distress include: "(1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm." *Id.* at 576.

Complainant testified quite compellingly about her emotional reaction to Respondent's blatantly racist and discriminatory statements. She was clearly very shaken by his comments and testified that she began to doubt whether she was welcome in the very same community she had recently moved into. Respondent's behavior clearly impacted her ability to do her job with any confidence for some time and left her feeling very uncomfortable and depressed. She found Respondent's words and attitude to be hurtful, demeaning and very unsettling at a time when she no longer expected such a thing to happen. I found Complainant to be quite sincere and earnest in her expression of distress over this incident. I find that she is entitled to an award of \$15,000 in damages for the emotional distress she suffered as a direct result of Respondent's unlawful conduct.

V. ORDER

Respondent is hereby ordered:

- (1) To cease and desist from making or causing to made any discriminatory statements or advertising in the rental of his property;
- (2) To cease and desist from quoting any adverse or more restrictive terms for rental based on the race of a prospective tenant;
- (3) To pay to the Complainant the sum of \$15,000 in damages for emotional distress, with interest thereon from the date the complaint was filed until such time as payment is made, or this order is reduced to a court judgment and post-judgment interest begins to accrue.

This decision constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a notice of appeal to the Full Commission within 10 days of receipt of this Order and a Petition for Review to the Full Commission within 30 days of receipt of this Order. Complainant may file a petition for attorney's fees within 10 days of receipt of this Order.

So Ordered this 6th day of September, 2011.

Eugenia M. Guastaferr
Hearing Officer

