

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

YOLANDA and CHARLES HAMPTON
and
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION,
Complainants

v.

Docket No. 10 BPR 02156

ANN WATSON,
Respondent

Appearance: Brian S. McCormick, Esq. for Yolanda and Charles Hampton

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 20, 2010, Yolanda and Charles Hampton (“Complainants”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that they were discriminated against by Respondent Ann Watson on the basis of national origin and race/color in violation of M.G.L. c. 151B, section 4 (6).

Complainants allege that they were tenants of Respondent, requested repairs to their apartment, withheld rent after the repairs were not made, and were subjected to racial harassment and disparate treatment.

The MCAD issued a probable cause finding on December 27, 2011 and certified the case for public hearing on May 30, 2012. A public hearing was held on January 22, 2013. The Complainants testified on their own behalf. Respondent did not appear for the

hearing. A default notice was sent to Respondent by certified mail on January 22, 2013. Respondent did not seek to remove the default.

Complainant submitted seven (7) exhibits at the hearing and subsequently submitted certified medical records which I designate as Complainants' Exhibit 8. Complainant's counsel submitted a post-hearing brief.

To the extent the proposed findings are not in accord with or irrelevant to my findings, they are rejected. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, the testimony is rejected. 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. Complainants Yolanda and Charles Hampton are a married couple. Mrs. Hampton is of Puerto Rican national origin and Mr. Hampton is African-American in race/color. They lived at 10 Desmond Avenue in Manchester, MA from 2004 to November of 2010, renting the top floor of a two-family house owned by Respondent Ann Watson. Complainant Yolanda Hampton testified that she and her husband signed a lease at the outset of their residency, but she did not submit the lease into evidence.
2. Complainant Yolanda Hampton testified that she and her husband only met Respondent Watson on one occasion, when they initially looked at the rental unit. At that time, Respondent was residing in Rockport, MA but in the summer of 2004, she moved to Florida. The Hamptons thereafter mailed their rent checks to Respondent's Florida address.
3. According to Complainant Yolanda Hampton, there were minor problems with the

rental unit during the first few years of their residency which she and her husband addressed on their own. During that period, the Hamptons routinely took care of all exterior maintenance on the property including yard work and snow removal for themselves and for the downstairs tenant, an elderly woman named “Mimi.” Charles Hampton helped Mimi with the upkeep of her unit by performing such services as fixing the downstairs smoke detector and repairing leaks.

4. The Hamptons were not allowed to park in the garage on the property but were initially allowed to store their snow blower and other items in a corner of the garage. When a Caucasian family, the Emerzians, moved into the first floor apartment in or around 2009, a handyman named “Doug” reconfigured the garage for their use. Complainants were still prohibited from parking inside and were told that they had to remove their storage items from the garage.
5. By 2010, window panes in the upstairs unit were falling out and/or wouldn’t open, making it necessary to encase them in plastic during the winter. The roof was leaking, the stairs were rotting, and the garage contained mold. Respondent Watson was aware of these deficiencies and wanted Charles Hampton to fix the roof without compensation but he refused. On one occasion, Mr. Hampton’s mother fell through rotting deck boards on the porch of the Hampton’s unit.
6. The Emerzians were given a new stove within months of moving in. The Hamptons were not given a new stove even though they informed Respondent that the burners on their stove were rusted and did not work on a consistent basis.
7. In or around April of 2010, Complainant Yolanda Hampton contacted the Board of Health about the condition of her apartment. At approximately the same time, she

sent Respondent Watson a letter announcing that Complainants would begin to place their rent in an escrow account in April of 2010 unless and until repairs were made. Watson responded by sending an eviction notice. She pursued the matter in the Salem District Court where, after a full hearing, Presiding Justice Robert A. Brennan found in favor of the Hamptons on June 17, 2010. Complainant's Exhibit 1. The Court issued a decision stating, "the rent withheld from April – June, 2010 was a reasonable response to the substandard condition of the home. Defendants are entitled to keep this money as compensation." Id. Respondent Watson was ordered to make the necessary repairs as quickly as possible.

8. At the end of June of 2010, Respondent Watson called Complainants. According to Yolanda Hampton's credible testimony, Watson said, "You people are always looking for a free ride" and "Why don't you nigger people (or your nigger husband) go back to Puerto Rico." Yolanda Hampton responded by saying "Fuck you" and hung up the phone. In another conversation, Respondent Watson told Yolanda Hampton that, "You nigger monkeys are always looking for a free ride." See Exhibit 5. Complainant Hampton first made reference to the racial slurs in a July 30, 2010 letter she wrote to Watson. Complainant's Exhibit 5.
9. At some point during the Hamptons' tenancy, Respondent Watson circulated a rumor that Mr. Hampton was seen talking to a man who stole her vehicle from the yard of 10 Desmond Street. The Manchester Police Department questioned Charles Hampton on the subject. Mr. Hampton credibly denied any involvement in the removal of Watson's vehicle.
10. Complainant Yolanda Hampton testified that Respondent Watson sent male

individuals to the Hamptons' apartment to spray paint their rusted stove rather than repair it or provide a new stove. Mrs. Hampton refused to grant them entry because it was night and she was alone. On another occasion, Mrs. Hampton called the police in regard to an individual who demanded to enter her apartment to make repairs.

11. Complainants filed a "Motion For Review" with the Salem District Court on August 18, 2010 referencing Watson's "racial comments." Complainant's Exhibit 2. The Court ordered the Hamptons to allow access to their apartment for the purpose of repairs between 8:00 a.m. to 6:00 p.m. as long as they were given twenty-four hours' notice; to permit repairs to the outside the apartment from dawn until dusk; to allow the removal of ceiling tiles in order to assess damage from leaks, and to refrain from interfering with deck repairs even though the repairs blocked access to the garage roof. Complainant's Exhibit 3. The Hamptons were allowed to continue placing their rent money into an escrow account pending completion of repairs. Id.
12. Respondent Watson reacted to Justice Brennan's decision by writing to the "State Attorney Office" claiming that the Hamptons were running a commercial laundry out of their apartment, accusing Mr. Hampton of being complicit in the theft of her car, questioning whether Judge Brennan was "afraid of block-busting and redlining," and asserting that her other tenants were afraid of the Hamptons. Complainant's Exhibit 7. Although the Hamptons' downstairs neighbor did not testify at the public hearing, she wrote to the MCAD that Yolanda Hampton had "always been kind to both my daughter & myself ... I have come to consider her a friend of mine, & my daughter loves her." Complainant's Exhibits 6.
13. Complainant Yolanda Hampton testified that her living situation caused her to

become depressed, frightened, cry all the time, and lose weight. Mrs. Hampton was afraid to be home without her husband who was away from home during the week working as a long-haul trucker. She would call her husband while he was away and frequently cry and express fear.

14. The Hamptons moved to Gloucester in November of 2010. At first, Mrs. Hampton did not want to move because she had difficulty coping with change, loved being a mile from the beach, and had close friends and good neighbors in the area. Mrs. Hampton was initially unhappy in Gloucester, but by the summer of 2011, she was comfortable in her new environment. She testified that her new landlord is “awesome.”
15. Complainant Charles Hampton testified that their neighbors in Manchester were like “family.” He said that having to move away from their neighbors caused his wife to lose weight and stop sleeping. Mr. Hampton took his wife to her primary care physician because he was concerned about her physical condition. He had to quit his job as a long distance truck driver in order to spend more time at home. Mr. Hampton expressed anger at the way he and his wife were treated.
16. Complainant Yolanda Hampton produced medical notes from her primary care physician’s office for the period from September of 2010 through April 22, 2011. Complainant’s Exhibit 8.¹ The first note dated September 3, 2010 states that Complainant’s apartment situation caused her to be anxious, cry, not eat, and have a tight chest. *Id.* at p. 2. She was prescribed Celexa and Ativan. *Id.* A September 10, 2010 note indicates that Mrs. Hampton felt mentally and physically exhausted, could

¹ In a post-hearing brief, Complainant’s counsel requests compensation in the amount of \$1,816.00 for Complainant Yolanda Watson’s medical bills, but no evidence was presented at the hearing of medical expenses.

not eat, had “rocks” in her stomach and a pain in her chest. Id. at p. 12. A September 13, 2010 notes states that Mrs. Hampton complained of chest pain and feared landlord retaliation. Id. at p. 5. An October 15, 2010 note refers Mrs. Hampton to counseling and references continuing anxiety and depression. Id. at p. 10. A January 3, 2011 note indicates that Complainant feels much better after moving from her Manchester apartment although a November 11, 2011 note references symptoms of hyperventilation, increased perspiration, and tight chest in regard to confronting her former landlord, Ann Watson, in legal proceedings. Id. at pp. 14.

CONCLUSIONS OF LAW

Complainant Yolanda Hampton is of Puerto-Rican national origin and her husband Charles Hampton is African-American. Complainants allege that they were subjected to racial harassment and disparate treatment by Respondent Ann Watson who owned and leased to them an apartment at 10 Desmond Avenue in Manchester, MA. Pursuant to G.L. c. 151B, section 4(7), it is an unlawful practice for the owner of residential property covered by c. 151B to discriminate against any person in the terms and conditions of housing because of race or color. The two-family residence occupied by Complainants falls within the definition of “other covered housing accommodations” set forth in G.L.c.151B, section 1(13).

In order to establish a prima facie case of racial harassment in housing, Complainants are required to show that they are members of a protected class who were the target of speech or conduct based on membership in the class and that the speech or conduct was sufficient to make the tenancy significantly less desirable to a reasonable

person in Complainant's position. See Gnerre v. MCAD, 402 Mass. 502 (1988) (sexual harassment in housing); Love v. Boston Housing Authority, 17 MDLR 249, 251 (1996).

Respondent Watson subjected Complainants to racial slurs of an odious nature, circulated false rumors about the Hamptons that reflected unfavorably on their characters, and attempted to evict them when they exercised their legal rights to place rent money in escrow. The racial epithets alone were sufficiently insulting and inflammatory to constitute racial harassment. See McCreath v. Elite Protective Services, 24 MDLR 154 (2002) (no numerosity test required where the word “nigger” is used because of its extreme offensiveness); Grzych v. American Reclamation Corp, 32 MDLR 238 (2010) (use of racial epithets such as “nigger-lover” constitutes hateful and discriminatory speech that is sufficiently severe and pervasive to create a racially hostile work environment); Johnson v. Lojek Co., 31 MDLR 74 (2009) (calling African-American a “boy” and “two-legged coon” is so egregious as to be severe and pervasive race discrimination). I conclude that Respondent Watson’s words and conduct towards Complainants stemmed from race-based animus that rendered the Hamptons’ living situation difficult to endure.

The evidence also establishes that the Hamptons’ Caucasian downstairs neighbors were not subjected to the same adverse conditions to which the Hamptons were subjected. The Hamptons complained about a broken stove for years without the problem being adequately addressed but when the Caucasian couple moved into the first floor apartment in or around 2009, they were supplied with a new stove within a few months. A handyman named “Doug” re-configured the garage for use by the downstairs neighbors but Complainants were prohibited from parking inside. The evidence therefore

establishes that similarly-situated tenants who were not of Complainants' protected class were treated in a substantially superior manner to Complainants. Such disparate treatment gives rise to an inference of race discrimination. See Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000) (elements of prima facie case vary depending on facts).

Once Complainants establish a prima facie case, the burden shifts to the second stage of proof in which Respondent must articulate a legitimate, nondiscriminatory reason for her actions. See Blare v. Husky Injection Molding Sys. Boston, Inc., 419 Mass. 437, 441-442 (1995). Respondent defaulted in this proceeding and, thus, failed to present a defense. Due to Respondent's default and the credible nature of Complainants' testimony, a preponderance of the evidence establishes that Complainants were the victims of discriminatory animus. See Lipchitz v. Raytheon, 434 Mass. 493 (2001).

IV. REMEDIES AND DAMAGES

Upon a finding of unlawful discrimination, the Commission is authorized to award remedies to effectuate the purposes of G.L. c. 151B and damages for the emotional distress suffered as a direct result of discrimination. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). An award of emotional distress damages 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 the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. See Stonehill College v. MCAD, 441 Mass. 549, 576 (2004).

Complainant Yolanda Hampton testified sincerely and credibly that the situation with her apartment caused her to become depressed, frightened, and to cry all the time. She called her husband while he was working away from home and expressed fear about her living situation. Having to move out of the Manchester apartment and away from neighbors who were like “family” caused Mrs. Hampton to lose weight and stop sleeping. Mr. Hampton had to quit his job as a long distance truck driver in order to spend more time at home with his wife. Mr. Hampton expressed anger at the way he and his wife were treated.

Medical notes from Mrs. Hampton’s primary care physician for the period from September of 2010 through April 22, 2011 reference Complainant being anxious, depressed, crying, not eating, having a tight chest, feeling mentally and physically exhausted, and having “rocks” in her stomach. She was prescribed Celexa and Ativan for her symptoms and referred to counseling. Although Mrs. Hampton felt better by January of 2011 after moving out of her Manchester apartment, a medical note dated November 11, 2011 references symptoms of hyperventilation, increased perspiration, and tight chest in regard to confronting her former landlord, Ann Watson, in legal proceedings.

Based on the foregoing, I conclude that Complainants are entitled to \$75,000.00 in damages for emotional distress caused by Respondent’s unlawful actions.

ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondent is ordered to:

- (1) Cease and desist from engaging in acts of racial discrimination in regard to

rental property;

- (2) Pay Complainant, within sixty (60) days of receipt of this decision, the sum of \$75,000.00 in emotional distress damages, plus 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 4th day of June, 2013.

Betty E. Waxman, Esq.,
Hearing Officer

