



City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Melaniece Sercye
Complainant,
v.

Barbara Reppen and Mark D. Wilson
Respondent.

Case No.: 08-H-42

Date of Order: October 21, 2009

Date Mailed: November 9, 2009

TO: Complainant
Melaniece Sercye
3701 W. Sunnyside
Chicago, IL 60625

Attorney for Respondents
Mark G. Weinberg
3612 N. Tripp Ave.
Chicago, IL 60641

FINAL ORDER ON LIABILITY AND RELIEF

YOU ARE HEREBY NOTIFIED that, on October 21, 2009, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed.

Based on the ruling, the Commission ORDERS Respondents jointly and severally to pay damages to Complainant in the total amount of \$15,000 plus interest from September 12, 2008, and further orders each Respondent individually to pay to the City of Chicago a fine of \$500.¹

Pursuant to Commission Regulations 100(15) and 250.150, parties seeking a review of this decision may file a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

¹**COMPLIANCE INFORMATION:** Unless another date is specified, a respondent must comply with a final order after administrative hearing no later than 28 days from the date of mailing of the later of a Board of Commissioners' final order on liability or any final order on attorney fees and costs. See Reg. 250.210. Enforcement procedures for failure to comply with a final order are stated in Reg. 250.220.

Payments of damages and interest are to be made directly to the Complainant, through the Complainant's attorney of record if applicable. Do not send such payments to the Commission on Human Relations.

Payments of fines are to be made by check or money order payable to City of Chicago, delivered to the Commission on Human Relations at the above address, to the attention of the Deputy Commissioner for Adjudication and including a reference to this case name and number.

Interest on damages is calculated pursuant to Reg. 240.700, at the bank prime loan rate, as published by the Board of Governors of the Federal Reserve System in its publication entitled "Federal Reserve Statistical Release H.15 (519) Selected Interest Rates." The interest rate used shall be adjusted quarterly from the date of violation based on the rates in the Federal Reserve Statistical Release. Interest shall be calculated on a daily basis starting from the date of the violation and shall be compounded annually.

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IN THE MATTER OF:

Melaniece Sercye

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v.

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Case No.: 08-H-42

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FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

On September 29, 2008, Complainant Melaniece Sercye filed this Complaint alleging source of income discrimination in violation of §5-08-010 of the Chicago Fair Housing Ordinance against Barbara Reppen, alleging that she was denied the rental of an apartment because she was a Section 8 Housing Choice Voucher recipient. On January 16, 2009, Complainant filed an Amended Complaint adding as a respondent the owner of the property in question, later identified as Mark D. Wilson. After an investigation resulted in a finding of substantial evidence, an administrative hearing was held on July 8, 2009.

At the administrative hearing, Respondents stipulated that they refused to rent an apartment to Complainant based on her source of income (Tr. P. 5), thereby admitting liability. (See Respondents' Post-Hearing Brief on Damages at p. 1) The administrative hearing went forward solely on the issue of relief.¹ Complainant is not seeking punitive damages. (Tr. P. 7) She is, however, seeking an award of damages for out-of-pocket losses, emotional distress damages, and—although she proceeded *pro se* and is not an attorney, an award of attorney's fees. Respondents filed a Post-Hearing Brief on Damages, which has been considered.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. As of September 12, 2008, Complainant Melaniece Sercye had been trying to find an apartment for herself and her daughter for over a month. It had been a difficult search because, as she found, many people do not want to rent to Housing Choice Voucher (also known as "Section 8") recipients. (Tr. 11).

2. In July of 2008, Complainant, age 50, was laid off from her job as a substance abuse counselor. (Tr. 21) She was living with her daughter in an apartment on the 3700 block of Sunnyside, in Chicago, and attending the University of Illinois' "Circle" campus to obtain a Masters Degree in Social Work, which she received in May 2009. (Tr. 20, 21, 22) Complainant had moved into that apartment several years earlier when her prior apartment was converted to condominiums and she had been hastily forced to move. (Tr. 25)

¹ The facts surrounding Complainant's interactions with Respondents will be set out in this ruling only to the extent that they reflect upon the issue of damages.

3. On September 12, 2009, Complainant responded to an ad placed on Craigslist by Respondent Barbara Reppen. (Tr. 27, Ex. 2) The ad read as follows:

3704 W. Cullom: Located 3 blocks north of Irving Park, 1 block east of Hamlin. Close to the Kennedy Expressway, metra, blue line. Just listed. Beautiful spacious rehabbed sunny 2 bedroom (both large) hardwood floors, large livingroom with decorative fireplace. Dining area, sunroom, 1 full bath, Modern Kitchen with dishwasher, custom painting, laundry, storage, off street parking for \$50.00. \$1075-\$1100.00 heat included. Pets Considered. Available immediately, 10/01/08. Contact Barbara (773) 407-1228

4. Complainant contacted Respondent Barbara Reppen, a licensed real estate broker who was acting as an agent for Respondent Mark Wilson of Wilson Builders. (Tr. 67-68). Complainant called Reppen's telephone number and they had a conversation. Complainant asked to see the apartment and Reppen initially set up an appointment for her to see it the next Saturday. (Tr. 70) Then Complainant asked, "Do you participate in the Section 8 program?" (Tr. 70) According to Reppen, she replied, "No, the owner does not participate in the Section 8 program..." (Tr. 70) After Complainant informed Reppen that it was against the law to refuse her voucher, (Tr. 28, 71) Reppen agreed to take her number down and call her back. She did, leaving a voice mail message on Complainant's answering machine. A copy of the tape was played at the hearing and admitted into evidence. (Ex. 5) Reppen informed Complainant that the owner did not want to participate in the Section 8 program because, among other things, "it's too much paperwork." (Tr. 76) Reppen's tone of voice was neither hostile nor friendly – just businesslike. Reppen asserted in the message that she "had checked with the federal fair housing office" and that "the owner did not want to take Section 8; it was too much paperwork."

5. Complainant credibly testified, "After the click, I was very devastated and ashamed. I was so humiliated and my daughter was standing there asking me about the apartment and I just turned to her and said we got to keep on looking..." (Tr. 13) Afterwards Complainant was afraid to look for an apartment out of fear of being turned down. (Tr. 15) She felt anxiety, anger, confusion and stated that she "lost some of my joy. I'm afraid that I might be doomed to stay in the same apartment for the rest of my life." (Tr. 16)

6. Complainant was near tears during this testimony. She testified that she has headaches often and that while sitting at the hearing (recounting what had taken place), she felt hopeless. (Tr. 16) Her testimony is supported by the fact that almost one year later, she remains in the apartment that she had rented three years ago. The hearing officer concluded that time has not softened the painful impact she felt when she was turned down for an apartment because the Respondent "couldn't be bothered" with the paperwork.

7. Although Respondents' counsel pointed out at the hearing that Complainant never even viewed the apartment on Cullom, the hearing officer found the Complainant believable when she testified that the apartment "sounded beautiful," newly rehabbed, with large bedrooms, a fireplace and a dishwasher; all amenities that her current living situation lacks. (Tr. 29) It is reasonable to conclude that the prospect of losing out on such an enjoyable living environment would stay with a person for months if not years.

8. Pursuant to Respondents' admission of liability for refusing to rent an available housing unit to Complainant based on her source of income (Tr. P. 5), Respondents have each violated the Chicago Fair Housing Ordinance. *Sullivan-Lackey v. Godinez*, CCHR No. 99-H-89 (July 18,

2001), aff'd *Godinez v. Sullivan-Lackey*, 352 Ill.App.3d 87 (1st Dist. 2004); see also *Huff v. American Management & Rental Service*, CCHR No. 97-H-187 (Jan. 20, 1999); *Hoskins v. Campbell*, CCHR No. 01-H-101 (Apr. 16, 2003); *Torres v. Gonzales*, CCHR No. 01-H-47 (Jan. 18, 2006); and *Draft v. Jercich*, CCHR No. 05-H-20 (July 16, 2008).

9. Reppen made it clear throughout her testimony that she was acting as agent for Respondent Wilson, the owner of the property, and that by refusing to rent to Complainant because of her proposed use of a Housing Choice Voucher as a source of income to support her rent payment, she was in fact carrying out her principal's wishes. Wilson, though present at the Hearing, chose not to testify. Liability is accordingly imposed against Wilson and Reppen jointly and severally. See the Commission's discussion of vicarious liability in *Warren et al v. Lofton & Lofton Management et al.*, CCHR No. 07-P-62/63/92 (July 15, 2009)

III. RELIEF

A. Damages Sought

Complainant is seeking three types of damages, two of which can readily be resolved. First, she is seeking an award of attorneys fees for the time she has spent pursuing this case on a *pro se* basis, although she is not an attorney. Respondents correctly point out in their brief that the Commission has already ruled that a *pro se* Complainant is not entitled to an award of attorney fees. *Austin v. Harrington*, CCHR No. 94-E-237 (Mar. 18, 1998). Therefore, consistent with the hearing officer's recommendation, no such damages will be awarded.

Next, Complainant seeks an award of \$15,000 for out-of-pocket losses. However, she presented no evidence of any expenditures related to the incident or the pursuit of this Complaint. Rather, she calculates her out-of-pocket losses in a manner similar to attorney fees, for the time she has expended filing paperwork, taking time out of her life, and doing research. (Tr. 58) Although she claimed expenditures related to driving downtown and parking, no direct testimony concerning the amount of such expenses was offered. The Commission agrees with the hearing officer that Complainant has not proved that she incurred any out-of-pocket losses, and no such damages will be awarded.

B. Emotional Distress Damages

Complainant is seeking \$35,000 as emotional distress damages. Respondent has suggested that an award of \$750 would be appropriate as in *Hoskins v. Campbell* and *Huff v. American Management and Rental Service*, *supra*.

It is well established that the amount of compensatory damages that may be awarded in a housing discrimination case is not limited to out-of-pocket losses but includes damages for the embarrassment, humiliation, and emotional distress caused by the discrimination. *Nash and Demby v. Sallas Realty et al.*, CCHR No. 92-H-128 at p. 20 (May 17, 1995). Moreover, "[b]ecause of the difficulty in evaluating the emotional injuries which result from deprivations of civil rights, courts do not demand precise proof to support a reasonable award of damages for such injuries." *Soria v. Kern*, CCHR No. 95-H-13 (July 17, 1996); see also *Block v. R.H. Macy & Co. Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983). Humiliation can be inferred from the circumstances as well as established by testimony. *Campbell v. Brown and Dearborn Parkway*, CCHR No. 92-FHO-18-5630 (Dec. 16, 1992); see also *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974), and *Crumble v. Blumthal*, 549 F.2d 462, 467 (7th Cir. 1977).

In *Nash/Demby v. Sallas Realty et al, supra.*, and numerous succeeding cases, the Commission identified the specific factors to be evaluated in determining the appropriate award of damages for emotional distress for a given case, namely (1) the duration and severity of the underlying discriminatory conduct and (2) the effect of that conduct on the complainant. The Commission also takes into account the purpose of emotional distress damages, namely to fully compensate a complainant for the suffering caused by the unlawful conduct. *Osswald v. Yvette Wintergarden Restaurant et al.*, CCHR No. 93-E-93 (July 19, 1995).

In two source of income discrimination cases, *Draft v. Jercich* and *Torres v. Gonzales, supra.*, the Commission sustained awards of \$5,000 in emotional distress damages to a complainant who was denied housing because of her Section 8 status. There is no magic formula or chart that determines what effect a discriminatory act will have on a particular complainant. Rather, the amount of damages depends upon the complainant's reaction to the discriminatory conduct and the egregiousness of the respondent's behavior. (*Nash and Demby, supra.* at p. 7) Where punitive damages are not sought, a respondent's conduct is to be examined solely to determine whether the discriminatory actions of the Respondent would be reasonably expected to elicit the type of reaction testified to by the Complainant.

The Chicago Fair Housing Ordinance makes no distinction between different types of unlawful conduct with regard to housing. A complainant who has been denied the right to rent the apartment of his/her dreams because of sexual orientation or parental status, religion or source of income may experience the same level of humiliation and pain as someone who is denied the right to rent because of his or her race, gender, or disability. The inquiry is a personal one and the appropriate award of damages depends upon the individual facts and circumstances of a given case.

In the view of the hearing officer, Complainant convincingly testified that she has suffered a palpable injury at the hands of Respondents. In the hearing officer's view, her testimony was relatively detailed, non-rehearsed, and heartfelt. The hearing officer noted that when she testified about listening to Reppen's forty-five second voice message, with her daughter standing next to her, he could see and feel the shame that she felt as she had to tell her daughter that "we got to keep on looking." That feeling of hopelessness has lasted for the past year. More importantly, she and her daughter have been deprived of the benefit of what sounded like a much more pleasurable living environment than she currently has.

In contrast, the cases cited by the Respondents in which this Commission awarded \$750 to complainants turned down for an apartment rental because of their voucher status were cases where the testimony was conclusory and there was no convincing evidence of a long-lasting effect flowing from the discriminatory conduct.

Respondents are correct that in the absence of expert medical testimony, no damages may be awarded based upon the possibility that some time in the future the Complainant may suffer from Post Traumatic Stress Syndrome. Neither the Commission nor the hearing officer have considered that possibility in assessing emotional distress damages. The facts that no medical or psychiatric evidence was presented and that there was no corroborative evidence of Complainant's emotional distress have been considered.

Based on having listened to the Reppen voice mail message and having heard Reppen's testimony, the hearing officer determined that the discriminatory conduct in this case was sufficiently egregious that one would expect the severe reaction that Complainant exhibited. The

hearing officer characterized Reppen, a licensed real estate broker, as dismissive in telling the Complainant over the phone that the owner could not be bothered with the Section 8 paperwork. At the administrative hearing, despite the efforts of her attorney to rein her in, Reppen exhibited what the hearing officer characterized as a confrontive and somewhat arrogant attitude that made him question whether she, to this day, understands that she violated the law. The hearing officer expressed serious concern whether, despite her protestations to the contrary (Tr. 88), she may remain unwilling to conform her actions to the law and rent to qualified individuals who happen to be Housing Choice Voucher recipients. (Tr. 86: "I am not discriminating. I don't choose to participate in the program...")

The fact that the discriminatory conduct did not take place over a prolonged period of time does not lessen the potential for significant emotional distress where a person is refused housing. For example, this Commission has awarded emotional distress damages of \$15,000 in other housing discrimination cases based on refusal to rent in incidents of relatively short duration. *Nash and Demby, supra.* (race discrimination); *Soria v. Kern, supra.*, (race discrimination); *Wright v. Mims*, CCHR No. 05-H-12 (Mar. 19, 1997) (parental status discrimination). See also *HUD v. Timmons*, HUDALJ 05-98-1000-8 (HUD Office of Admin Law Judges 11-1600), where \$50,000 in emotional injury damages was awarded to a woman rejected for tenancy due to the race of her adopted child; and *Banai v. HUD*, 102 F.3d 1203 (11th Cir. 1997), where a \$70,000 award was made to a black couple denied home rental.

Hearing officers are uniquely situated to evaluate evidence of emotional distress drawn from a complainant's testimony as well as other testimonial evidence, and such factual determinations will not be overturned by the Board of Commissioners unless they are against the weight of the evidence presented at the hearing. Section 2-120-510(I), Chicago Municipal Code; Reg. 240.610(a); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999). In this case, the hearing officer's recommendation of \$15,000 in emotional distress damages is consistent with the evidence and not contrary to Commission precedent. The Commission accordingly awards emotional distress damages of \$15,000.

C. Interest on Damages

Section 2-120-510(I), Chicago Municipal Code, allows the Commission to order the payment of interest on a complainant's actual damages, and Reg. 240.700 provides for pre- and post-judgment interest at the prime rate, adjusted quarterly, and compounded annually starting at the date of the violation. As recommended by the hearing officer, such pre- and post-judgment interest on the emotional distress damages of \$15,000 is awarded, starting from the date of violation on September 12, 2008.

D. Fines

Section 5-8-130 of the Chicago Fair Housing Ordinance provides that violations shall be punished by a fine up to \$500. The hearing officer recommended the maximum fine of \$500 against each Respondent. The Commission accepts this recommendation, and fines each Respondent \$500 for the violation of the Chicago Fair Housing Ordinance.

E. Referral to Illinois Division of Professional Regulation

Section 5-8-140 of the Chicago Fair Housing Ordinance provides that the corporation counsel (now Department of Law) of the City of Chicago shall file a notice with the Department of Professional Regulation of the State of Illinois (now the Division of Professional Regulation

within the Illinois Department of Financial and Professional Regulation) if any licensed real estate broker or salesperson has been found to have violated the ordinance. The hearing officer recommended such a referral regarding Respondent Barbara Reppen, a licensed real estate broker now adjudicated to have violated the Ordinance. Indeed, the filing of such a notice is mandatory, and accordingly the Commission will refer this order and ruling to the City of Chicago Department of Law with a request to take the necessary action.

VII. CONCLUSION

The Commission finds Respondents Barbara Reppen and Mark D. Wilson liable for source of income discrimination in violation of the Chicago Fair Housing Ordinance and orders the following relief:

1. Payment to the City of Chicago of fines of \$500 by Respondent Reppen and \$500 by Respondent Wilson;
2. Payment to Complainant of emotional distress damages in the amount of \$15,000, plus pre- and post-judgment interest on the foregoing damages from the date of violation on September 12, 2008, calculated as set forth in Commission Regulation 240.700, with responsibility for such payment imposed on Respondents jointly and severally.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner
Entered: October 21, 2009