



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:

Nickey McGhee
Complainant,
v.

Mado Management LP
Respondent.

Case No.: 11-H-10

Date of Ruling: April 18, 2012

Date Mailed: April 26, 2012

TO COMPLAINANT:

Nickey Michael McGhee
P.O. Box 409081
Chicago, IL 60640

TO RESPONDENT:

Amy Lauricella, Mark Furlane
Drinker Biddle & Reath LLP
191 N. Wacker Dr., Suite 3700
Chicago, IL 60606

FINAL ORDER

YOU ARE HEREBY NOTIFIED that, on April 18, 2012, the Chicago Commission on Human Relations issued a ruling in favor of Respondent in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby **DISMISSED**.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek a review of this Order by filing 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
Entered: April 18, 2012



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FINAL RULING ON LIABILITY

I. PROCEDURAL HISTORY

On February 8, 2011, Complainant Nickey E. McGhee filed a Complaint with the City of Chicago Commission on Human Relations alleging that Respondent MADO Management LP (“MADO”) engaged in racial discrimination by refusing to allow him to rent an apartment. Complainant McGhee claims that Respondent’s actions are a violation of Chapter 5-8-030 of the Chicago Municipal Code because the refusal to rent was racially motivated.

On March 11, 2011, MADO submitted a Response to Complaint denying that it had discriminated against the Complainant because of his race. The Commission thereafter entered and mailed on June 30, 2011, an Order Finding Substantial Evidence and set the case for an Administrative Hearing. On September 9, 2011, an Order Appointing Hearing Officer and Commencing Hearing Process was mailed to the parties setting a Pre-Hearing Conference for October 21, 2011.

Following that Conference, on November 7, 2011, the Hearing Officer entered and mailed to all parties a Scheduling Order directing the parties to submit a Pre-Hearing Memorandum by November 23, 2011, and setting the Administrative Hearing for November 30, 2011. The parties subsequently submitted Pre-Hearing Memoranda.

The Administrative Hearing took place as scheduled on November 30, 2011. On approximately December 23, 2011, Respondent submitted a Post-Hearing Brief.

On February 17, 2012, the hearing officer issued his Recommended Decision on Liability and Damages, recommending a finding of no liability and informing the parties of the right to submit objections to the recommendation pursuant to Commission Regulation 240.610(b). No objections have been received.

II. FINDINGS OF FACT

1. MADO is the owner of commercial and residential buildings including nursing homes, various businesses, and a golf course. Tr. 6.

2. 1552-54 N. LaSalle, Chicago, is a property owned and managed by MADO. Tr. 6. It has twenty-five (25) apartment units. Tr. 139. Some of the units have been combined into single apartments from multiple apartments over the years. Tr. 132-139. Although the numbering

system is 1-36, the actual number of apartments is only twenty-five (25) because of those past renovations. Tr. 116-123, 140. The rooms are rented to men only as they require the occupants to share a bathroom. Tr.130, 132.

3. In the early part of January 2011, an apartment at 1552-54 N. LaSalle was available to rent. Tr. 124.

4. On January 6, 2011, April Jacques, a receptionist and administrator at MADO, prepared a Word document of current apartment listings to be signed by Ricky Matuwski, the Property Manager at MADO, and then faxed it to the *Chicago Reader* on Saturday, January 8, 2011, for publication on January 13, 2011. Tr. 70- 72.

5. The *Chicago Reader* is a weekly publication that contains classified advertising materials and new materials of all different kinds and is circulated free of charge in the City of Chicago and throughout its suburbs. Tr. 73.

6. On January 13, 2011, the *Chicago Reader* published the classified advertisement (Resp. Exh. 2) which read:

1552-54 NORTH LASALLE. Men only rooming house. One room per tenant. Hardwood floors, heat, electricity are included. No pets. Month-to-month lease agreement \$350 per month. One month security deposit. Please call 312-787-9400 for viewing and other info.

7. The rental unit referred to in the January 13 advertisement was apartment 23 (“Unit 23”) and it was the only apartment then unoccupied and available at 1552-54 N. LaSalle. Tr. 74-75, Tr. 124. Unit 23 was a one-room apartment with one sink and one bed. Tr. 140-141.

8. The racial makeup of the 1552-54 N. LaSalle building occupants as of January 26, 2011 was five Caucasians, four African-Americans, and sixteen Hispanics. Tr. 131, 134-5.

9. On January 20, 2011, Jacques again prepared a Word document of current apartment listings to be signed by Matuwski, and then faxed it to the *Chicago Reader* on Saturday, January 22, 2011, for publication on January 27, 2011. Tr. 73. The advertisement was the same as that described in paragraph 6. Resp. Exh. 2.

10. Mr. Villegas was a Hispanic male who was interested in renting Unit 23. Tr. 70.

11. Sometime after January 13, 2011, but before January 24, 2011, Villegas viewed Unit 23 through an appointment with MADO. Tr. 84.

12. On January 24, 2011, Villegas came to the MADO office and met with Matuwski, filled out an application for Unit 23, went with Matuwski to again view the apartment, and said he would return on January 25, 2011, to pay MADO the security deposit. Tr. 84-85.

13. On January 25, 2011, Villegas returned to the MADO office and gave Jacques the security deposit. Tr. 86. With the security deposit paid, the apartment was considered by MADO as off the market. Tr. 86. On January 26, 2011, Jacques prepared for Villegas a rental agreement. Tr. 86-87. Villegas signed the rental agreement that day. Tr. 87.

14. On January 25, 2011, Jacques called another person who was interested in viewing Unit 23, told him that the apartment was taken, and cancelled his appointment. Tr. 80, 82.

15. Complainant Nickey McGhee is African-American. Comp. Par. 1.

16. On the evening of January 26, 2011, McGhee went to the *Chicago Reader's* main headquarters and acquired a copy of the upcoming issue that was to be released the next morning Tr. 15, 74. McGhee read through the real estate section of the *Chicago Reader* and saw the MADO classified advertisement. Tr. 15-16.

17. On the morning of January 27, 2011, McGhee called the number listed in the advertisement and spoke to a woman he identified as Michelle. Tr. 21, 60. McGhee made two calls to that number, each lasting less than one minute. Tr. 21-22. Immediately thereafter, McGhee went to 1552-54 N. LaSalle to see the building. Tr. 24. He testified that he liked what he saw of the building, although the entrance was locked, and wanted the apartment because it was affordable. Tr. 24, 26, 27. He thereafter stopped briefly at the neighboring cleaners to talk with a woman there about getting into the building before proceeding to the MADO office. Tr. 24, 26, 64.

18. At the MADO office, McGhee introduced himself to the Caucasian woman at the desk there as the caller from earlier that morning. Tr. 26. Upon being asked about 1552-54 rental, he testified that the woman said that "there's nothing available." Tr. 27. McGhee asked if she was sure because "the ad just came out, and I just called." Tr. 26-27. McGhee claims that the woman then "said very rudely and abruptly: There's nothing available." Tr. 27. McGhee walked away feeling, he testified, "betrayed... bitter and angry... discriminated." Tr. 27. McGhee says that as a result he lost time from his work and incurred mental and emotional distress. Tr. 31. MADO witnesses testified that it did not employ anyone named Michelle and the only Caucasian employee who works at the front desk stated she had never seen McGhee. Tr. 94,109.

19. On January 27, 2011, Jacques prepared a Word document of current apartment listings to be signed by Matuwski, then faxed it to the *Chicago Reader* on Saturday, January 29, 2011, for publication on February 3, 2011 Tr. 88-89. The document showed no available apartment units at 1552-54 N. LaSalle. Tr. 89.

20. In the first week of February 2011, McGhee returned to the MADO office. Tr. 29. The African-American woman at the desk, Jacques, informed McGhee that there were no vacancies and instead offered him a list of rentals in alternate locations. Tr. 29. This list had no properties in McGhee's price range so he left the office. Tr. 29. According to Jacques, McGhee was asked if he wanted to leave his name and address in the event there was a subsequent opening at 1552-54 LaSalle and he declined to do so. Tr. 99-100.

21. On November 29, 2011, MADO contacted McGhee and advised him it did have a room available at 1552-54 N. LaSalle. Tr. 32. McGhee declined to pursue this opportunity saying "[I]t's an insult to me after I had to go through all this.... That would be like going into the lion's den." Tr. 32.

III. APPLICABLE LEGAL STANDARDS

1. Section 5-8-030 of the Chicago Fair Housing Ordinance states:

It shall be unfair housing practice and unlawful for any owner...firm or corporation having the right to sell, rent, lease, sublease, or establish rules or policies for any housing accommodation, within the City of Chicago, or any agent of any of these, or any real estate broker as such... (C) to refuse to sell, lease or rent, any real estate for residential purposes within the City of Chicago because of the race, color, sex gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the proposed buyer or renter.

2. In the Commission of Human Relations' Regulations implementing the Chicago Fair Housing Ordinance, Regulation 420.130 states:

It is a violation of the [Chicago Fair Housing Ordinance] for a person to refuse to sell, rent or lease a dwelling to a person or to refuse to negotiate with a person for the sale, rental or leasing of a dwelling because of that person's membership in a Protected Class (see Reg.100(26) above). Such prohibited actions include, but are not limited to:...

- (a) Failing to accept or consider a person's offer because of that person's membership in a Protected Class;
- (b) Failure to sell, rent or lease a dwelling to, or failing to negotiate for the sale, rental or leasing of a dwelling with any person because of the person's membership in a Protected Class;...
- (c) Indicating to a person through words or conduct that the dwelling which is actually available for inspection, sale, or rental has been sold or rented (or is otherwise unavailable) because of the person's membership in a Protected Class;...
- (g) Limiting information to a person by word or conduct regarding suitably priced dwellings available for inspection, sale or rental because of the person's membership in a Protected Class.

3. Commission Regulation 100(26) defines "Person" as:

[O]ne or more individuals, corporations, partnerships, political subdivisions, municipal corporations or other governmental units or agencies associations, labor organizations, unincorporated organizations, trustees in cases under Title 11 of the United States Code, receivers, trustees or other fiduciaries, and any successors or assigns thereof.

4. Commission Regulation 100(27) defines "Protected Class" as:

[O]ne or more of the following: race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, or source of income.

IV. CONCLUSIONS OF LAW

1. McGhee is a member of a protected class and, if denied housing by MADO because of his race, would be protected by Section 5-8-030.

2. In order to establish a *prima facie* case of racial discrimination, a protected complainant has to show that “the landlord knew of the complaint’s interest in apartment in question *and* the landlord... rejected the person while the property was *available*. *Leadership Council for Metropolitan Opera Communities v. Souchet*, CCHR No. 98-A-107 (Jan. 17, 2001) at p. 8 [emphasis the decision’s]. As the Commission stated in *Lopez v. Arias*, CCHR No.99-H-12, (Sept. 20, 2000) at p. 7: “There can be no discriminatory refusal to rent when there is nothing available to rent.”

3. At the time McGhee first made contact with MADO with respect to renting Unit 23, that apartment, which was the only available apartment in the building, had already been rented. While it is possible that he was mistakenly told that Unit 23 was available on January 27, 2011, during one of his two under-one-minute telephone calls, the evidence established unequivocally that all units in the LaSalle building were occupied as of January 25, 2011. As a result, there has been no discriminatory refusal to rent in violation of Section 5-8-030.

4. There is additional evidence here which buttresses the absence of racial discrimination: the lack of credibility to McGhee’s account of his telephone conversations with MADO, the racial composition of the tenant population at 1552-54 LaSalle, and McGhee’s February 2011 refusals to pursue the opportunity of renting a unit at 1552-54 LaSalle.

V. DISCUSSION

McGhee claims that MADO discriminated against him because he was African-American when it did not allow him to rent an apartment at 1552-54 N. LaSalle in January 2011. In order for McGhee to prevail on this claim, as previously noted, he has to show that an apartment was available to rent at the time he sought to rent it. Without this basic starting point, there would be no housing for MADO to deny McGhee because of his race and, therefore, a refusal to rent because of the race of the proposed renter would have been impossible.

The undisputed evidence demonstrates that all of the units at 1552-54 N. LaSalle, including Unit 23, had been rented as of January 25, 2011. While the *Chicago Reader* did contain an advertisement for showing the availability of Unit 23 as of that date, this advertisement resulted from its placement the prior week consistent with MADO’s practice and, no doubt, the *Reader’s* requirements. It did not guarantee that an apartment would be available on the date of publication and, as is true of all such housing advertisements, the seller or landlord was free to rent or sell the property in question prior thereto. That is what occurred in this case. Villegas had already rented Unit 23 and that unit was off the market before McGhee sought to rent it.

In light of the foregoing analysis, it is not necessary to resolve the credibility dispute as to the content of McGhee’s January 27, 2011, telephone calls to MADO. The hearing officer found McGhee’s testimony about those calls, however, to suspect. McGhee asserted that MADO’s representative not only informed him that Unit 23 was available but, additionally, described that unit and its “amenities” and provided him with directions to the MADO office. The hearing officer found it unlikely that such a detailed discussion could have occurred in the 49- and 46-

second-long telephone calls reflected on McGhee's phone records. Moreover, the absence of any MADO employee named Michelle, the failure of the only Caucasian MADO desk employee to recognize McGhee and the normal MADO business practices of checking to insure that a unit is available prior to representing that it is and only scheduling an apartment viewing when a MADO representative is available all militate against McGhee's version of the January 27 telephone conversations and his subsequent actions that day.

The hearing officer also pointed out that the mixed racial composition of those persons renting apartments at 1552-54 N. LaSalle in January 2011 as well as MADO's subsequent representations to McGhee that he could rent an apartment at either 1552-54 N. LaSalle or at any other of its rental locations provide additional considerations for finding that the account of events given by MADO witnesses was credible and that, accordingly, there was no racial animus.

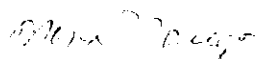
The Commission reviews a hearing officer's proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: "The commission shall adopt the findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing." This standard of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission will not re-weigh a hearing officer's recommended findings of fact unless they are against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

Here, the Commission finds that the hearing officer's factual findings in this case are not against the manifest weight of the evidence, and the hearing officer's conclusions from the evidence are consistent with applicable law.

VI. SUMMARY AND CONCLUSION

In conclusion, the hearing officer recommended a finding that Complainant Nickey McGhee has not established by a preponderance of the evidence that MADO Management LP violated the Chicago Fair Housing Ordinance. The Board of Commissioners accepts and adopts the recommendation that Complainant has not proved by a preponderance of the evidence that Respondent violated the Chicago Fair Housing Ordinance. Accordingly, the Commission finds in favor of Respondent and the Complaint in this matter is DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS

By: 
Mona Noriega, Chair and Commissioner
Entered: April 18, 2012