

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD, MARYLUZ RODRIGUEZ
& MARTA PEREZ,
Complainants

v.

DOCKET NO. 07SPR02382

MICHAEL PRICE & GLORIA
LOMBARDI,
Respondents

Appearances:

Meris Bergquist, Esquire for Maryluz Rodriguez & Marta Perez
Scott Hibbert, Esquire for the Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about September 12, 2007, Complainants Maryluz Rodriguez and Marta Perez filed a complaint with this Commission charging Respondents Michael Price and Gloria Lombardi with discrimination in housing on the basis of receipt of public assistance, a Section 8 housing subsidy, and disability. The Investigating Commissioner issued a split decision, finding probable cause as to the public assistance claim and lack of probable cause with respect to the disability claim. Attempts to conciliate the matter failed and the case was certified to public hearing. A public hearing was held before me on January 19, 2010. After careful consideration of the entire record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Maryluz Rodriguez resides at 189 Piper Road in West Springfield Ma with her disabled mother, Marta Perez¹, and her two sons, now ages 19 and 12, who, according to Rodriguez, have learning disabilities.

2. Respondent Michael Price is the owner of computer consulting business MP Consulting, Inc. that he formed in 1989. Price also owns 12 rental units in his own name, including a two-unit property at 49 Day Street, West Springfield and a two-unit property at 222 New Bridge Street, West Springfield. Price has been a landlord for six years and has not attended any training regarding fair housing laws. His real estate enterprise is separate from his computer consulting business.

3. Respondent Gloria Lombardi has been employed by MP Consulting for 12 years as assistant to Price and is the company's sole employee. Lombardi schedules all appointments and service calls for MP Consulting. Although Lombardi testified that she had no duties with regard to Price's rental properties, she answers the telephone line for Price's realty business when Price is not in the office and schedules appointments for Price to show his apartments to potential tenants.

4. In 2006 Complainant Maryluz Rodriguez lived with her two sons in a subsidized housing project in West Springfield. Rodriguez was unhappy with her living situation because her apartment had been burglarized in December 2006 and because of a neighbor's undesirable conduct, including use of illicit drugs. At the time, Complainant Perez, who is Complainant Rodriguez's mother, lived two miles away in a Section 8 subsidized apartment and was having problems with unreliable personal home care workers. According to Rodriguez, because her mother's personal care workers were

¹ Complainant Perez was not present at the public hearing and thus did not testify.

unreliable, in January 2007, Perez's managed care worker suggested Rodriguez and her sons be added to Perez's Section 8 certificate to enable the family to live together and to allow Rodriguez to better care for her mother.

5. Rodriguez testified that her physician wrote a recommendation that she and her children be added to Perez's Section 8 voucher. Rodriguez stated that because Section 8 vouchers expire after two months if the voucher holder has not found suitable housing, her mother's social worker suggested that Rodriguez begin looking for an apartment before officially applying so as not to have the voucher expire during her apartment search. Rodriguez began searching for an apartment while she completed the required paperwork for a Section 8 voucher, but she had not been issued a Section 8 voucher at the time she began looking for an apartment.

6. Rodriguez testified that she began looking for a three-bedroom apartment in February 2007. On or about Sunday March 18, 2007, she saw an advertisement in the Springfield Republican for an apartment on Day Street, West Springfield. The ad listed two phone numbers: (413) 531-2733 and (413) 747-2810, which were Price's business and cell phone numbers. Rodriguez called one of the numbers and on Sunday March 18 left a message that she was interested in the apartment. The following day, Monday March 19, 2007 a woman named Gloria returned her call. The parties stipulated that the woman was Gloria Lombardi. Rodriguez told Lombardi she was interested in a three-bedroom apartment. Lombardi told her the apartment was located on Day Street and was on the second floor. Rodriguez responded that she needed a first floor apartment because her mother was legally blind. Gloria then told her there was a four-bedroom apartment available on the first floor and that she would have to put down first month's rent, last

month's rent and a security deposit. Rodriguez told Gloria she would be able to provide a security deposit but she would have to discuss the first and last months' rent with the housing authority to determine her portion of the rent under the Section 8 program.

7. According to Rodriguez, Lombardi replied that they did not accept Section 8. Rodriguez responded, "What do you mean you don't take section 8? That's illegal." Lombardi responded that she would rent to whoever the hell she wanted because it was her house, and hung up the phone. Rodriguez then called the Northampton Housing Authority, who would issue the Section 8 voucher, and explained to the secretary what had happened. The secretary gave a telephone number to call to report discrimination and she did so. (Testimony of Rodriguez; Rodriguez's MCAD complaint) I credit Rodriguez' testimony. Complainant testified that she felt "very small" and "angry" after the conversation with Lombardi. I credit her testimony.

8. Lombardi testified that she has no specific memory of Rodriguez's telephone call but claimed she would not have made the statement, "I'll rent to whoever the hell I want." I do not credit her testimony and find that she made the statements alleged by Rodriguez. Respondent Price did not speak to Rodriguez on March 19, 2007 or at any time thereafter. He did not show her an apartment and she never asked for a rental application.

9. Rodriguez testified that the four-bedroom apartment was affordable according to the Section 8 program's guidelines. However, Rodriguez offered no evidence of her household income, the monthly rent for the four-bedroom unit or the guidelines to which she referred.

10. Rodriguez testified that after the telephone conversation with Lombardi she continued her apartment search, but stated landlords frequently did not return her calls or told her that they did not accept Section 8 tenants, because they could not afford to keep their properties up to code. Rodriguez testified that during her apartment search, she was turned down for ten apartments and that it took her about 15 months to find a place to live. She testified that as a result of having been repeatedly told by landlords that they did not accept Section 8, she had anxiety attacks for which she was prescribed medication. I credit her testimony.

11. Rodriguez looked only in West Springfield because she did not want to move her sons to a new school. She ultimately found a rental property at 189 Piper Road, a single family home, in West Springfield where she has lived for two or three years. Her current rent is \$950.00 per month plus utilities. She is happy at her current location and gets along well with her landlord who keeps the apartment in good condition. She testified that she currently has a three-bedroom Section 8 voucher.

12. Brooke Deren is a student at Westfield State College and a trained tester for the Housing Discrimination Project of the Massachusetts Fair Housing Center.
(Testimony of Brooke Deren)

13. Deren testified that on or about March 21, 2007, the Housing Discrimination Project assigned her to call the phone numbers in Price's advertisement, posing as a Section 8 recipient and to inquire about the availability of an advertized unit. Lombardi scheduled Deren for an appointment with Price to view a second floor unit at 222 New Bridge Street on March 23, 2007. After Price showed her around the apartment, Deren asked Price for an application to review with her Section 8 administrator for approval.

Deren testified that Price replied that he did not take Section 8. He told her that he once agreed to rent to a Section 8 recipient who, following the lengthy inspection process, no longer wanted the unit, causing him to lose rental income. Price told Deren that she could give him a non-refundable deposit until the apartment was approved for Section 8. Price told Deren that she should have mentioned her Section 8 status when scheduling the showing because it would have saved them both time. He also suggested Deren inform other prospective landlords up front about her Section 8 subsidy in order to save everyone time. (Testimony of Brooke Deren; Ex. C-1) I credit Deren's testimony, which is supported by her report that was written contemporaneously.

14. Price testified that he could not recall meeting with Deren. He stated that he has never denied a rental application on the basis of Section 8, but may have told Deren that the Section 8 program involves processing delays. I do not credit Price's testimony that he has never rejected a Section 8 rental application.

15. A document entitled "Telephone Test Report Form" completed by Jennifer Braun, a housing tester for the Housing Discrimination Project of the Massachusetts Fair Housing Center, was admitted into evidence in lieu of her testimony by agreement of the parties. According to the document, on June 12, 2007 Braun called 747-2810 and spoke to a woman named Gloria. Braun asked whether an advertized three-bedroom apartment was available and Gloria said that it was. Braun then asked Gloria if she accepted Section 8 vouchers and Gloria said "no." (Ex. C-3) I accord this document no weight because, unlike the detailed testimony of Deren, there was no supporting testimony regarding the circumstances under which the document came into being.

16. Price and Lombardi each testified that Lombardi is not involved in Price's rental business, had no authority to approve or reject a prospective tenant, and does not screen out calls with respect to the eligibility of tenants. Lombardi testified that if a prospective tenant called when Price was out of the office, she merely took down the caller's number and set up an appointment according to Price's schedule. I do not credit Price and Lombardi's testimony that she had no role in screening housing calls for eligibility. I find that in addition to making appointments for apartment showings, Lombardi also rejected out of hand tenants who told her they were Section 8 recipients. I draw the inference that Lombardi did so at the instruction of Price and I find that she acted as Price's agent in this regard.

17. Price stated that the vast majority of his tenants receive some sort of public assistance, and that he currently has a tenant of two years who receives a Section 8 subsidy. (Ex. R-1)² However, at the time of Rodriguez's telephone call, Price had never rented to a tenant with a Section 8 subsidy. Price testified that Section 8 is a great program because the rent is paid by direct deposit and requires the landlord to maintain the property. He also stated that the drawback to Section 8 is the lengthy approval and inspection process.

² The Section 8 documents relative to Price's tenant, Maria Rivera, were submitted after the hearing at Respondent's request.

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) Complainants must show that they are members of a protected class who were denied an apartment, deterred from seeking an apartment or otherwise treated differently because of their membership in a protected class. See, e.g. Luna v. Lynch, 7 MDLR 1699 (1985). When alleging a violation of the statute, Complainants may establish their case using either direct or indirect evidence. In view of the fact that Complainant Perez did not appear at the public hearing, had no contact with Respondents, and submitted no evidence of her Section 8 subsidy, other than the hearsay testimony of Rodriguez, I order that Perez's complaint against Respondents be dismissed.

I further conclude that Rodriguez has failed to establish a prima facie case of housing discrimination pursuant to c. 151B s. 4(10) based on her status as a Section 8 housing subsidy recipient, because she was not the holder of a valid Section 8 subsidy at the time of the events in question. When Rodriguez embarked on a search for housing, she represented that she was a Section 8 recipient and was deterred by Lombardi from

applying for an apartment owned by Price after referring to Section 8. However, Rodriguez has failed to establish that she met the objective requirements for renting the apartment in question. Rodriguez testified that she was not in possession of a Section 8 housing subsidy certificate at the time she called Lombardi. No one from the issuing authority testified about or verified her eligibility for Section 8, and there were no documents that did so, and therefore, she ultimately failed in her proof that she was a member of the protected class. In the absence of evidence establishing Rodriguez's eligibility for Section 8, I conclude that Rodriguez has failed to establish a prima facie case of housing discrimination on the basis of receipt of section 8 subsidy. Therefore the claim of Rodriguez under M.G.L.c. 151B§4(10) is hereby dismissed

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 that, based on the credible testimony of Rodriguez and Deren, that Price had a policy of not renting to Section 8 tenants and that Respondents Lombardi and Price each individually violated G.L. c.151B §4(7B) by their statements to Rodriguez and Deren respectively that they did not accept Section eight tenants.

As G.L. §4(7B) makes clear, *any person* may be held liable under the statute, and the person making the prohibited comments need not be the owner of the property. Therefore, I conclude that Lombardi is liable for her statements to Rodriguez that “she” did not take Section 8 tenants. In addition, I conclude that Price is individually liable for his discriminatory statements to tester Brooke Deren that he would not accept her application for tenancy because of her Section 8 certificate.

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. Price’s duty to prospective tenants extends beyond his duty to obey the fair housing laws with respect to his own personal actions. As owner of the property in question, he 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.

While Rodriguez never met or dealt with Price regarding the rental of the property at Day Street, it is undisputed that he is the owner of record of the property at Day Street about which Rodriguez inquired. The law is clear that a property owner need not have overtly committed discriminatory acts nor engaged in any specific conduct relating to the alleged discriminatory acts to be liable for such acts. As owner of the property, Price cannot evade liability for unlawful statements by Lombardi, merely because he did not

deal personally with the Complainants. Therefore, I conclude that Price is liable for any discriminatory acts Lombardi, under a theory of non-delegable duty.

Respondent Price as the landlord of the property, may also be held 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. In the instant case, the evidence indicates that although Price handled the actual rental of apartments, Lombardi clearly had the actual authority to take telephone inquiries, schedule showings of Price's apartments and screen out tenants who inquired about Section 8. The evidence supports the inference that Price was aware of and consented to this arrangement, and I conclude that Lombardi was acting within the scope of her authority and that Price is liable pursuant to G.L. c. 151B s. 4(7B) for Lombardi's discriminatory statements to Rodriguez while acting as his agent.

For all the reasons discussed above, I conclude that the Respondents Lombardi and Price both violated G.L.c.151B §4(7B) by their statements to Rodriguez and Deren respectively that they did not accept Section 8 tenants.

IV. DAMAGES

A. Emotional Distress

Upon a finding of unlawful discrimination, the Commission is authorized to grant remedies to effectuate the purpose of 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 Respondent. 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 her conversation with Lombardi she felt “very small” and “angry” and suffered from panic attacks. While some of Complainant’s emotional distress was due to cumulative effects of repeated rejection by landlords who refused to accept Section 8 subsidies, I conclude that a portion of Complainant’s emotional distress was caused by Lombardi’s statement and I conclude that Complainant is entitled to emotional distress award in the amount of \$1,000.00 to compensate her for the distress caused by the unlawful statement of Lombardi.

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 that Respondent Lombardi violated G.L.c.151B §4(7B) by her discriminatory statements to Rodriguez. I conclude that a civil penalty against her in the amount of \$2,000.00 is warranted. Having found that Respondent Price violated G.L.c.151B §4(7B) by his discriminatory statement to Deren, and that he is also liable for Lombardi's discriminatory statements while acting as his agent, I conclude that a civil penalty against him in the amount of \$4,000.00 is warranted.

V. ORDER

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

- 1) Respondents immediately cease and desist discriminating on the basis of receipt of public assistance under M.G.L. c.151B §4(10).
- 2) Respondents immediately cease and desist making discriminatory statements with respect to rental property to recipients of public assistance under M.G.L. c, 151B§4 (7B)
- (3) Respondent Gloria Lombardi pay to the Commonwealth of Massachusetts the sum of \$2,000.00 as a civil penalty.
- (4) Respondent Michael Price pay to the Commonwealth of Massachusetts the sum of \$4,000.00 as a civil penalty.
- (5) Respondents pay to Complainant Rodriguez the sum of \$1,000.00 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.

This constitutes the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this the 2nd day of July, 2010.

JUDITH E. KAPLAN
Hearing Officer