



OHIO CIVIL RIGHTS COMMISSION

Governor Mike DeWine

Commissioners: Lori Barreras, Chair | William Patmon, III | Dr. Carolyn Peters | Madhu Singh
Executive Director Angela Phelps-White

September 23, 2020

McKayla Anderson

8294 Wooster Pike, Apt. 5
Cincinnati, OH 45227

Complainant

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**Re: McKayla Anderson v. Magna Properties LTD
Complaint No. 18-HOU-DAY-26907**

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) (ALJ's Report). You may submit a Statement of Objections to the ALJ's Report within twenty-three (23) days from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be **received** by the Commission no later than **October 16, 2020**. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.



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Please send the original Statement of Objections to: **Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, Ohio 43215-3414.** *All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

Desmon Martin /kk

Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Angela Phelps-White, Executive Director/Darlene Sweeney-Newbern, Director of Regional Operations/Stephanie Bostos-Demers, Chief Legal Counsel



IN THE MATTER OF:

McKayla Anderson
Complainant,

Complaint No. 18-HOU-DAY-26907

v.

Magna Properties LTD
Respondent.

**ADMINISTRATIVE LAW JUDGE'S
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS**

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ALJ'S REPORT

Denise M. Johnson
Ohio Civil Rights Commission
Division of Hearings
30 East Broad Street, 5th Floor
Columbus, OH 43215
(614) 466-6684
Chief Administrative Law Judge

INTRODUCTION AND PROCEDURAL HISTORY

McKayla Anderson (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on December 6, 2017.

The Commission investigated the charge and found probable cause that unlawful discriminatory practices had been engaged in by Respondents Steven Ossenbeck (Ossenbeck) and Magna Properties LTD (MP LTD) in violation of Ohio Revised Code R.C. 4112.02(H)(1), (4), and (19).

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a Complaint on October 26, 2018.

The complaint alleges that Respondents Ossenbeck and MP LTD refused to grant a reasonable accommodation to Complainant based on her disability and refused to rent to her because of her emotional support animal.

Respondents filed an Answer to the Complaint on November 30, 2018. Respondents admitted certain procedural allegations but denied that they engaged in any unlawful discriminatory practices.

A public hearing was held on August 8, 2019 in the 7th floor conference room of the Ohio Civil Rights Commission Cincinnati Satellite office located at 7162 Reading Road, Cincinnati, Ohio.

The record contains the previously described pleadings, a transcript consisting of 232 pages of testimony, exhibits admitted into evidence at the hearing, post-hearing briefs filed by the Commission on December 12, 2019, Respondents on January 3, 2020 and the Commission's reply brief filed on January 9, 2020.

FINDINGS OF FACT

The following findings are based, in part, upon the Administrative Law Judge's (ALJ) assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered the opportunity each witness had to observe and know the things discussed; each witness's strength of memory; frankness or lack of frankness; and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on December 6, 2017.
2. The Commission determined on September 6, 2018 that it was probable that Respondents engaged in unlawful discrimination in violation of R.C. 4112.02(H)(1), (4), and (19).
3. The Commission attempted but failed to resolve this matter by informal methods of conciliation.

4. In 2017 Complainant started college as a freshman student at the University of Cincinnati studying Environmental Science. (Tr. 18)
5. During her freshman year, Complainant attempted suicide on March 21, 2017. This caused Complainant to leave school after fall semester. (Tr. 17)
6. After her release from the hospital, Complainant went to her parents' home in Texas to recover. (id.)
7. Complainant also began seeing Melissa Brentlinger (Brentlinger) for therapy. (id.)
8. Complainant was treated at Tropical Texas Behavioral Health (TTBH) and was diagnosed with (1) anxiety, (2) depression, (3) adjustment disorder, (4) child abuse disorder, (5) cannabis abuse disorder, and (6) alcohol abuse disorder. (Tr. 15-19) (Comm. Exh. 1)
9. Complainant's depression made it hard for her to get out of bed in the morning. (Tr. 15)
10. Anxiety made it difficult for Complainant to complete what she was doing, and she would shut down. (id.)

11. Complainant's adjustment disorder made it difficult for her to adjust to change in her life, such as moving or a new job, and brought back Complainant's depression and anxiety. (id.)
12. Complainant's childhood and abuse disorder brought back memories and would keep her in a state of depression. (id.)
13. Complainant's cannabis and abuse disorder arose as coping mechanisms for all the other disorders she was facing. (id.)
14. Complainant talked about an animal assistant with Brentlinger. (Tr. 19)
15. Brentlinger encouraged Complainant to get an animal assistant and thought that it would be beneficial for Complainant. (id.)
16. Complainant had a trial run with her animal assistant, a dog named Leif, and made progress with her condition. She ultimately adopted Leif. (Tr. 19-20)
17. Brentlinger prescribed Complainant an emotional support animal (ESA) and thereafter Complainant made plans to return to school in the fall of 2017. (Tr. 22) (Comm. Exh. 2)

18. Complainant saved up for an apartment deposit, called her academic advisor to get everything set up, and applied for student loans. (Tr. 22)
19. Complainant found housing at 218 Bosley St. and provided her landlord with the prescription from Brentlinger that permitted her to keep Leif with her. (Tr. 24)
20. Complainant also worked seven days a week as a pre-school teacher and at a local diner. (id.)
21. Complainant walked home from the diner and on one occasion walked home from work at 4:00 AM. (id.)
22. Complainant looked for housing that was closer to school and her workplace and in a safer location than her housing on Bosley St. (Tr. 26)
23. Complainant found a posting on Facebook by Hannah Patterson (Patterson) who was looking for a sublet and/or another roommate at 124 B Lyons Street. (Tr. 24)
24. Patterson had spoken to Respondent Ossenbeck about getting a new roommate because one of their roommates was leaving. (Tr. 156-157)

25. Respondent Ossenbeck told Patterson that they could use his rental application as a template to draw up an agreement between them, but he was not going to sign a new lease just because they were getting a roommate. (Tr. 156-157)
26. Complainant contacted Patterson to ask about the posting and told her that she had Leif who was an ESA. (Tr. 24-25)
27. Patterson told her that she and her roommates were fine with Leif, but Complainant would have to talk to the Respondent about having an ESA. (Tr. 25)
28. Complainant called Respondent Magna Properties at the number shown on Google and spoke to someone about her having an ESA. (Tr. 68-69)
29. Complainant was told that Respondent Magna Properties did not allow pets. (id.)
30. Complainant tried to explain that Leif was not a pet, but an ESA. (Tr. 69)
31. Complainant met with Patterson and the roommates living at 124 Lyon Street. (Tr. 25)

32. Complainant told Patterson that she was definitely interested in renting the apartment. (id.)
33. Complainant received a lease agreement and the rental application via email from Patterson. (Tr. 25)
34. Complainant filled out and signed the rental application and the lease agreement. (Tr. 29, Comm. Exh. 3)
35. Complainant put the rental application documents, a copy of her ESA letter, and \$500.00 in cash in an envelope. (Tr. 25)
36. After she finished exams on December 6, 2017, Complainant texted Patterson and asked where to drop off her application, lease, deposit, and ESA letter. (Tr. 28-30)
37. Patterson told Complainant to put her application in the onsite mailbox at 124 Lyon Street. (Tr. 28-30)
38. 124 Lyon Street had four separate rental units in a building on a rectangularly shaped lot. (Tr. 176-178) (Comm. Exh. 4, Report and Recommendation Attachment 1)
39. The lot sloped upward from the street/sidewalk with entry and exit by a paved driveway which ran parallel to the building. (id.)

40. The access to the apartments was by ascending stairs located toward the end of the building. (id.)
41. At the rear of the building was a basement that was accessible by stairs that went down to a door that was the entrance to an office for Respondent MP LTD and Respondent Ossenbeck that had the mailing address of 124-B Lyon Street. (Tr. 32, 172)
42. The mailbox for 124-B Lyon Street was on the side of the building next to a bay window five feet from the doorway of the office. (id.)
43. The mailbox was marked "Magna Properties, Ossenbeck". (id.)
44. Complainant entered the property with Leif who wore a short black harness with a leash that Complainant held on to. (Tr. 32, 70)
45. Complainant walked up the driveway and stopped at the mailbox that was on the side of the bay window to see which slot to put her envelope in. (id.)
46. Respondent Ossenbeck came from behind the building and immediately told Complainant "get the dog off the property." (id.)

47. Complaint told Respondent Ossenbeck that she understood that he did not allow pets, but she was turning in an application. (id.)
48. Respondent Ossenbeck told Complainant “not for this apartment.” (id.)
49. Complainant responded to Respondent Ossenbeck, trying to explain that Leif was an ESA and that the ESA note was in the envelope that she had with her. (Tr. 32-33)
50. Respondent Ossenbeck told Complainant that he did not allow ESAs or pets. (Tr. 33)
51. Complainant tried to explain to Respondent Ossenbeck about ESAs being allowed under the Fair Housing Act and that Respondent had to rent to her. (id.)
52. Respondent Ossenbeck told Complainant he did not care and again told her that he did not allow pets or ESAs. (id.)
53. Respondent Ossenbeck also told Complainant that if he did rent to her, he would have to charge her a huge deposit up front of as much as \$2000. (Tr. 33)

54. Complainant agreed to pay for any damages Leif might cause but told Respondent Ossenbeck that he was not allowed to charge for damages up front. (Tr. 33)
55. Respondent Ossenbeck replied that he did not care, “that’s how it was.” (id.)
56. Complainant asked Respondent Ossenbeck what he would do if someone had a seeing eye dog. (id.)
57. Respondent Ossenbeck told Complainant that that would be “too bad.” (id.)
58. Complainant told Respondent Ossenbeck that he could not do that, that it would be illegal. (id.)
59. After a final brief exchange of words between Complainant and Respondent Ossenbeck about the legality of his position, he turned and walked away from Complainant. (Tr. 34)
60. Complainant left the premises without putting her application in the mailbox. (Tr. 35)
61. Complainant had a mild anxiety attack on the way back to her apartment, so she called her mother who helped Complainant calm down. (id.)

62. Complainant messaged Patterson and told her that she would not be taking the apartment after the conversation with Respondent Ossenbeck. (Tr. 37)
63. Complainant researched what she could do about what happened and found the Ohio Civil Rights Commission (OCRC) website. (Tr. 37-38)
64. Complainant filed a charge online with the OCRC. (Tr. 38)
65. As a result of not submitting her application and lease, Complainant was unable to find an apartment near campus and ultimately moved in with her girlfriend. (Tr. 41)
66. Complainant's grades dropped and she failed a class. (Tr. 42)
67. Complainant dropped out of college after Spring semester of 2018. (Tr. 42)
68. Complainant suffered a setback in her recovery as well and became ill, sometimes missing work. (Tr. 42-43, 44-46)
69. Complainant returned to the university in the Fall of 2018, going to the Blue Ash campus instead of main campus because of costs and the distance to drive to main campus. (Tr. 47)

70. Complainant's new expected graduation date is in 2022. (Tr. 49)

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented.¹

1. The Commission alleged that Respondents discriminated against Complainant based on disability when they refused to rent to Complainant because of her animal assistant by refusing to make a reasonable accommodation to their no pets policy to allow Complainant's animal assistant.
2. These allegations, if proven, would constitute violations of R.C. 4112.02(H)(1), (4), and (19), which provides that it is an unlawful discriminatory practice for any person to:
 - (1) Refuse to (...) rent (...), refuse to negotiate for (...) rental of housing accommodations, or otherwise

¹ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

deny or make unavailable housing accommodations because of (...), disability, (...);

(4) Discriminate against any person in the terms or conditions of (...), renting, leasing, or subleasing any housing (...) because of (...) disability, (...);

(19) Refuse to make reasonable accommodations in rules, policies, practices, or services when necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling unit, including associated public and common use areas;

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112.

4. The Commission must prove a violation of R.C. 4112.02(H) by a preponderance of reliable, probative, and substantial evidence. R.C. 4112.05(G) and 4112.06(E).

5. Federal case law applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone*, 82 Ohio St.3d 569, 697 N.E. 2d 204 (1998).

6. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under the federal Fair Housing Act (FHA) of 1968 (Title VIII), as amended. See e.g. *Howard v. City of Beavercreek*, 108 F. Supp. 2d 866; *Hamrick v. Union Tp.*, 81 F. Supp. 2d 876, (applying FHAA analysis to state law fair

housing claims where language of the relevant provisions of the two statutes was similar).

7. These standards require the Commission to first prove a *prima facie* case of discrimination. *McConnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 1819, 36 L.Ed.2d 668 (1973).
8. The Commission may establish a *prima facie* case of housing discrimination based upon the individual's disability/failure to accommodate by proving that:

- (1) Complainant is disabled;
- (2) that the Respondent knew or should reasonably be expected to know of the disability;
- (3) that accommodation of the disability may be necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling;
- (4) that the accommodation is reasonable; and
- (5) that Respondent refused to make the requested accommodation.

Dubois v. Ass'n. of Apt. Owners, 453 F.3d 1175, 1179 (9th Cir. 2006).

9. When a disabled individual requests as a reasonable accommodation to have an animal assistant in their dwelling

unit, the request is in conformance with R.C. 4112.02(H)(19) as amplified by O.A.C. 4112-5-07 (C) which sets forth in pertinent part that:

Every disabled person who has an animal assistant or who obtains an animal assistant shall be entitled to keep the animal assistant on the premises purchased, leased, rented, assigned, or subleased by such disabled person. (...)

A reasonable accommodation under the Fair Housing Act may include the use of an emotional support animal in one's own home, despite the existence of a rule, policy or law prohibiting such an animal. *Revock v. Cowpet Bay West Condominium Assn.*, 853 F.3d 96, 110 citing *Castillo Condo. Ass'n v. U.S. Dep't of Hous. & Urban Dev.*, 821 F.3d 92, 100 (1st Cir. 2016); *Anderson v. City of Blue Ash*, 798 F.3d 338, 363 (6th Cir. 2015); *Bhogaita v. Altamonte Heights Condo. Ass'n, Inc.*, 765 F.3d 1277, 1289 (11th Cir. 2014).

10. After the Commission establishes a prima facie case, the burden shifts to Respondent to articulate a legitimate, non-discriminatory reason to rebut the presumption of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981).
11. If Respondent successfully articulates a legitimate, non-discriminatory reason, the Commission must prove by a

preponderance of the evidence that Respondent's articulated reason is a pretext for discrimination. *Id.*

12. The Commission may show that Respondent's proffered legitimate reasons are pretextual by showing by a preponderance of the evidence "(1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate the action, or (3) that they were insufficient to motivate the action." *Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994).

13. In order to establish the first element of a prima facie case of failure to accommodate based on disability, the Commission must introduce credible evidence that Complainant was disabled pursuant to R.C. 4112.01(A)(13) which defines "disability" as:

(...) a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.

14. R.C. 4112.01(16)(a) defines "physical or mental impairment" to include any of the following:

- (i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems; neurological' musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; (...)
 - (iii) Diseases and conditions including, but not limited to, orthopedic, visual, speech, and hearing impairments; cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction, and alcoholism.
15. In determining whether an individual is substantially limited in a major life activity the ADA's rules give the following interpretive guidance:

The term "substantially limits" shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. "Substantially limits" is not meant to be a demanding standard.

An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. (...) C.F.R. § 1630-2(j) (1) (i)(ii)

16. In 2017 Complainant was diagnosed with several mental impairments: (1) anxiety, (2) depression, (3) adjustment disorder, (4) child abuse disorder, (5) cannabis abuse disorder, and (6) alcohol abuse disorder. (Tr. 15-19) (Comm. Exh. 1)
17. Complainant's mental/emotional impairments affected her ability to motivate herself to rise out bed and focus on performing everyday tasks associated with living. (id.)
18. The Commission introduced credible evidence to establish that Complainant is a person with mental impairments that fall within the definition of a disability.
19. Complainant's ESA improved her mood swings by inspiring her to get out of bed, go outside to get fresh air, and take care of her ESA as well as take care of herself. (Tr. 15-19) (Comm. Exh. 1)
20. The Commission introduced credible evidence to establish that Complainant's ESA was necessary to afford her an equal opportunity to use and enjoy the apartment and that the accommodation was reasonable.
21. The Commission introduced credible evidence to establish that on December 6, 2017 Complainant attempted to apply for an

apartment owned by Respondents at 124 Lyon Street. (Tr. 28-30)

22. When Complainant approached the Respondents' mailbox at 124 Lyon Street accompanied by her ESA, Complainant made Respondent aware that her dog was an ESA and was not a pet. (id.)
23. Respondent Ossenbeck refused to waive Respondents' no pet policy to accommodate Complainant's disability. (id.)
24. The Commission established a prima facie case of housing discrimination based upon Complainant's disability and Respondents failure to accommodate.
25. The Respondents' articulated reason for failing to rent to Complainant is based on the following assertions: (1) the Complainant did not ask for an application personally, through U.S. mail or through email exchange with Respondent Ossenbeck or Magna Properties, and (2) since Complainant did not ask for and receive an application from Complainant they did not know that she was coming to 124 Lyon on December 6, 2017, therefore Respondent Ossenbeck could not have known why Complainant was on the premises with an rental application or who she was or that her dog was a ESA.

26. The Commission asserts that the Respondents' articulated reasons are incredible and not worthy of credence and are a pretext to cover up Respondent Ossenbeck's discriminatory conduct.
27. The Commission's assertion is well taken.
28. The Respondents' reasons for not renting to Complainant are incredible and not worthy of credence for the following reasons.
29. Respondent Ossenbeck testified that other than submitting an application to Respondents via email or online, a prospective renter could complete an application and put it in an envelope along with a deposit and put in Respondent Ossenbeck's mailbox. (Tr 138-139)
30. The Respondents provide rental housing to young students. (Tr. 181)
31. Complainant is a young person who on December 6, 2017 attempted to follow Respondents' process to submit an application in an envelope in Respondents' designated mailbox to rent an apartment.

32. It is reasonable to infer that Respondent Ossenbeck knew the Complainant's purpose for being on the property and showing him an envelope was to submit an application to rent an apartment.
33. It also reasonable to infer that although Respondent saw the Complainant approach the mailbox with Leif, he assumed Leif was a pet without giving any consideration to Complainant's explanation that Leif was an ESA and not a pet.
34. Respondents' assertion about the formality with which Complainant had to give notice that Leif was an ESA is without merit.

Applying case law interpreting similar employment discrimination provisions under the ADA what is important are not formalisms about the manner of the request, but whether the employer has notice of the employee's wish to be accommodated. *id.*, citing *Taylor*, 184 F.3d at 313. *Taylor v. Phoenixville Sch. Dist.*, 184 F.3d 296, 313 (3d Cir. 1999)

35. The credible evidence in the record supports a determination that Respondent Ossenbeck had notice that Complainant was requesting an accommodation for her ESA, refused to provide

a reasonable accommodation and rent to Complainant based on her disability in violation of R.C. 4112.02 (H)(1), (4), (19).

36. Therefore, the Complainant is entitled to relief as a matter of law.

DAMAGES

1. When there is a violation of R.C. 4112.02(H), the statute requires an award of actual damages shown to have resulted from the discriminatory action, as well as reasonable attorney's fees. R.C. 4112.05(G)(1).
2. The statute also provides that the Commission, in its discretion, may assess civil penalties to vindicate the public interest. R.C. 4112.05(G)(1)(b).

ACTUAL DAMAGES

3. The purpose of an award of actual damages in a fair housing case "is to put the [Complainant] in the same position, so far as money can do it, as . . . [the Complainant] would have been, had there been no injury or breach of duty" *Lee v. Southern Home Sites Corp.*, 429 F.2d 290, 293 (5th Cir. 1970) (citations omitted).
4. To that end, victims of housing discrimination may recover

damages for tangible injuries such as economic loss and intangible injuries such as humiliation, embarrassment, and emotional distress. *See Steele v. Title Realty Co.*, 478 F.2d 380, 384 (10th Cir. 1973) (actual damages of \$1,000 awarded to plaintiff consisting of \$13.25 in telephone expenses, \$125.00)

TANGIBLE DAMAGES

5. The Commission introduced the following credible evidence of the economic loss that Complainant suffered because Respondent refused to waive the no pet policy to provide a reasonable accommodation to Complainant to have an ESA.

- (a) Rent and utilities increase from 8/1/18-7/1/19: \$1,925.00

- (b) Four days of missed work: \$384.00

- (c) Increased distance to work (24 miles round trip), average 5 days per week for 52 weeks @ .52 cents per mile: \$3,244.80. (Comm. Exh. 7) (Tr. 41-45)

6. The Commission has therefore established that the Complainant suffered a tangible economic loss of \$5,553.80.

INTANGIBLE DAMAGES

7. The Commission introduced credible evidence of the emotional distress that Complainant suffered because Respondent refused to waive the no pet policy to provide a reasonable accommodation to Complainant to have an ESA.
8. Because of Respondent Ossenbeck's conduct, Complainant suffered a setback managing/stabilizing her disability which adversely affected the Complainant in the following ways: (1) she required more frequent therapy sessions, and (2) her grades fell and she dropped out of school which impacted her goal to graduate by 2021 to enter the work force. (Tr. 47-54)
9. The ALJ therefore recommends that Complainant be awarded \$15,000.00 for the emotional distress and humiliation that she suffered as a result of Respondent Ossenbeck's conduct.

CIVIL PENALTIES

10. When the Commission determines that there has been a violation of R.C. 4112.02 (H), the Commission may assess civil penalties. R.C. 4112.02(5)(b).
11. The purpose of an award of civil penalties is to deter future illegal conduct and punish the offender in order to vindicate the public's interest in the elimination of housing discrimination. *State ex rel. Petro v. Pure Tech Sys.*, 2015-Ohio-1638 (8th Dist. Cuyahoga Cty.)
12. Courts have wide discretion in assessing civil penalties. *Memphis Ctr. for Indep. Living v. Richard & Milton Grant Co.*, 2004 WL 6340158 (W.D. Tenn.)
13. The amount of civil penalties assessed depends on a number of factors, including:
 - 1) the nature of the violation;
 - 2) the degree of culpability;
 - 3) any history of prior violations;
 - 4) the financial circumstances of the defendants;
 - 5) the goal of deterrence; and

6) other matters as justice may require *Id.*

14. Applying the foregoing criteria to this case:

- Respondent Ossenbeck has either managed or been responsible for leasing property for over fifty (50) years. (Tr. 134)
- The Respondents provide rental housing to young students. (Tr. 181)
- Respondent has never received any fair housing training on ESAs. (Tr. 152)
- In 2018 Respondents collected over \$294,675.00 in rental income from seven (7) rental properties. (Tr. 131)
- Respondent Ossenbeck testified that he doesn't agree with the law but that doesn't mean he disobeyed the law. (Tr.182)
- Respondent Ossenbeck's disagreement with the law is based on his belief that if a person has a dog that might potentially create damage to the property that landlords should have the right to charge a higher amount for a deposit. (id.)
- It is reasonable to infer that Respondent Ossenbeck knew that Complainant's purpose for being on the property was to

apply because it is the Respondents' business to provide rental housing to young students.

- The credible evidence in the record and the reasonable inferences drawn therefrom establish that instead of obeying the law Respondent Ossenbeck's conduct shows an indifference toward the law.
- There was no evidence introduced by the Commission of prior violations by the Respondents.
- The Commission has a substantial interest in seeking to deter Respondents and all housing providers from engaging in discriminatory housing conduct which is prohibited by R.C. 4112.02 (H).

15. Based on the foregoing criteria, the ALJ recommends that Respondent be assessed \$10,000.00 in civil penalties.

ATTORNEY'S FEES

1. The prevailing party is entitled to attorney's fees. R.C. 4112.05(G)(1) and (H); *Schoenfelt v. Ohio Civ. Rights Comm.*, 105 Ohio App.3d at 379. ²
2. In the instant case the Commission is the prevailing party.
3. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.
4. In order to create a record regarding attorney's fees, the Commission should file an affidavit from plaintiff's attorneys in Hamilton County, Ohio regarding the reasonable and customary hourly fees they charge in housing discrimination cases. Also, a detailed accounting of the time spent on this case must be provided and served upon Respondents. Respondents may respond with counter-affidavits and other arguments regarding the amount of attorney's fees in this case.
5. If the Commission adopts the ALJ's Report and the parties cannot agree on the amount of attorney's fees, the Commission

² If the commission finds that a respondent has not engaged in any unlawful discriminatory practice against the complainant or others it may award to the respondent reasonable attorney's fees to the extent provided in 5 U.S.C. 504 and accompanying regulations. R.C. 4112.05 (H)

should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted.

6. Respondents may respond to the Commission's Application for Attorney's fees within 30 days from their receipt of the Commission's and Complainant's Applications.

OBJECTIONS

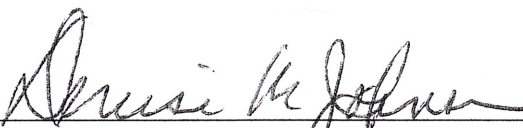
7. Objections to ALJ's Report & Recommendation should be filed pursuant to the Ohio Administrative Code.
8. Objections to the recommendation of attorney's fees can be filed with the Commission's Compliance Unit after the ALJ makes a Supplemental Recommendation to the Commission regarding Attorney's Fees.

RECOMMENDATIONS

For all the foregoing reasons, it is recommended in Complaint No. 14-HOU-DAY-26907 that:

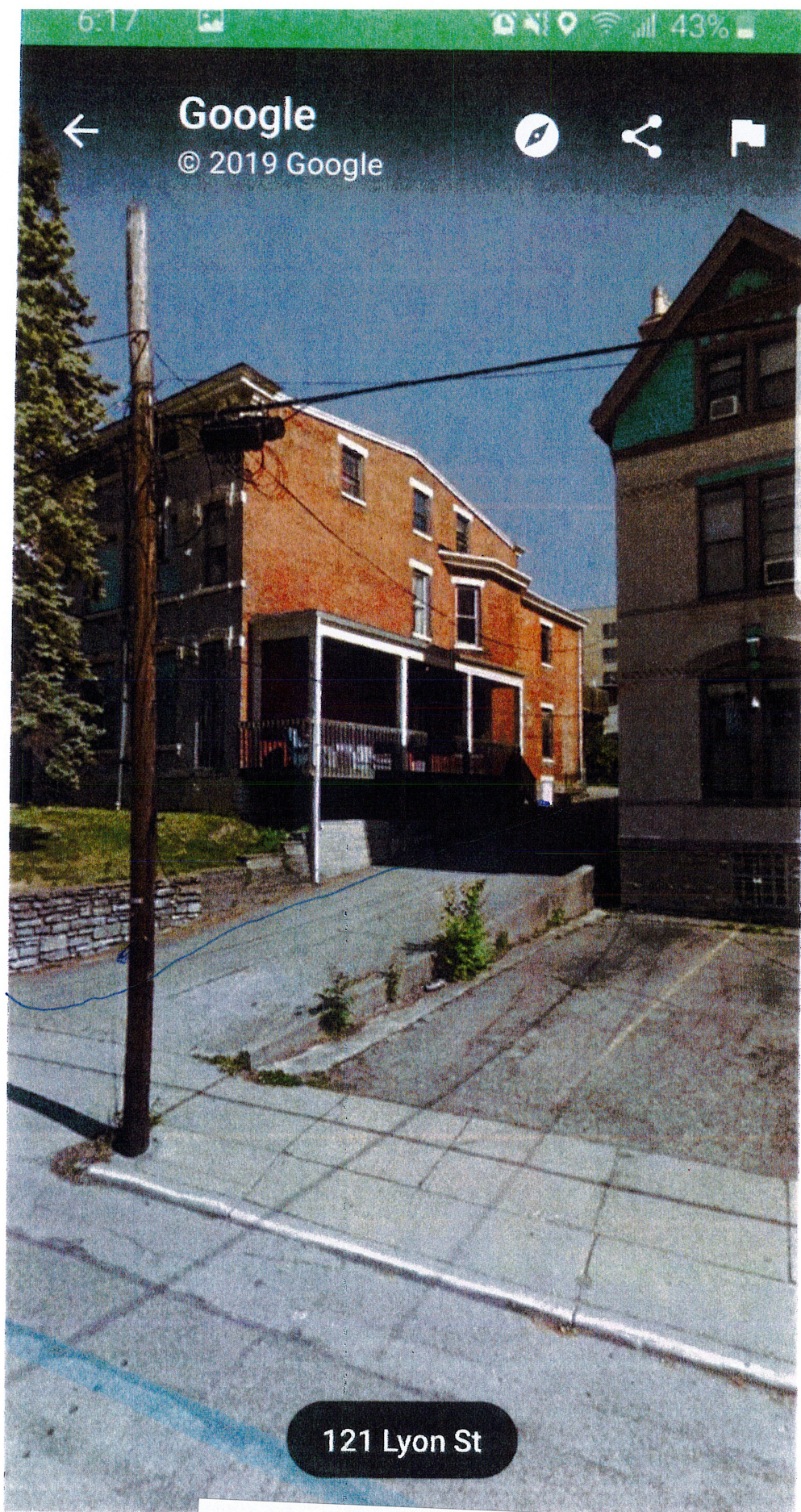
1. The Commission orders Respondents to cease and desist from all discriminatory practices in violation of Chapter 4112 of the Revised Code;
2. The Commission orders Respondents to pay Complainant \$20,553.80 in actual damages;

3. The Commission orders Respondents to pay the Commission \$ 10,000.00 in civil penalties;
4. The Commission orders Respondents, within six (6) months of the date of the Commission's Final Order, to receive training regarding the anti-discrimination fair housing laws of the State of Ohio. As proof of their participation in fair housing training, Respondents shall submit certification from the trainer or provider of services that Respondents have successfully completed the training; and
5. The Commission orders Respondents, within seven (7) months of the Commission's Final Order, to submit their Letters of Certification of Training to the Commission's Compliance Department.


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: September 23, 2020

DMJ/kk



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EXHIBIT
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7-18-19 LET

Report and Recommendation
Attachment 1

COMMISSION EXHIBIT