OHIO CIVIL RIGHTS COMMISSION

Governor Mike DeWine
Commissioners: Lori Barreras, Chair | Juan Cespedes | William Patmon, III | Dr. Carolyn Peters | Madhu Singh
Executive Director G. Michael Payton

June 4, 2019

Yvonne Brinkley
1740 Genessee Avenue
Columbus, OH 43211

Complainant

Aram Gosdanian
1190 South Sunbury Road
Westerville, OH 43081
Respondent

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Re: Yvonne Brinkley v. Aram Gosdanian, Derek Kinzer, Abbeyhill Realty & Management, LLC, and Lyric Properties, LLC
Complaint No. 18-HOU-COL-45201

Enclosed is a copy of the Administrative law Judge's Corrected 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 the original 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 **June 17, 2019**. *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.

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: Lori A. Anthony, Section Chief – Civil Rights Section / Sharon Tassie, Assistant Section Chief / Michael Payton, Executive Director / Darlene Sweeney-Newbern, Director of Regional Operations / Stephanie Bostos-Demers, Chief Legal Counsel

IN THE MATTER OF:

Yvonne Brinkley
Complainant,

Complaint No. 18-HOU-COL-45201

v.

Aram Gosdanian, Derek Kinzer,
Abbeyhill Realty & Management, LLC and
Lyric Properties, LLC
Respondent.

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

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ALJ'S REPORT
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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

Yvonne Brinkley (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on May 8, 2017. The Complainant filed an amended charge on May 12, 2017.

The Commission investigated and found probable cause that unlawful discriminatory practices had been engaged in by Aram Gosdanian, (Respondent Gosdanian) Derek Kinzer (Kinzer), Abbeyhill Realty & Management LLC (Respondent Abbeyhill) and Lyric Properties LLC (Respondent Lyric) in violation of R.C. 4112.02(H)(12).[1]

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission issued the Complaint, Notice of Hearing, and Right of Election on February 1, 2018

[1] At the public hearing on October 31, 2018 and on January 25, 2019 the Commission moved to dismiss Derek Kinzer as a party because Kinzer had moved from out of the apartment complex and could not be located. For good cause shown, the Commission's motion is **GRANTED.**

The Complaint alleged that Respondents engaged in unlawful retaliation against Complainant for filing a charge of discrimination in violation of R.C. 4112.02(H) (12).

Respondents filed their answer to the complaint on February 27, 2018.

A public hearing was held on October 31, 2018 at the Commission's Central Office, 30 E. Broad Street, 5th floor, Columbus, Ohio 43232.

The record consists of the previously described pleadings; a transcript consisting of 255 pages of testimony; exhibits admitted into evidence at the hearing; and the post-hearing briefs filed by the Commission on February 6, 2019; by Respondent on February 26, 2019; and the Commission's reply brief filed March 16, 2019.

FINDINGS OF FACT

The following findings of fact are based, in part, upon the ALJ's 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's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a charge with the Commission on May 8, 2017 and subsequently amended the charge on May 12, 2017.

2. The Commission determined on November 16, 2017, that it was probable that Respondents engaged in unlawful retaliation in violation of R.C. 4112.02(H)(12).

3. The Commission attempted to resolve this matter by informal methods of conciliation.

4. The Commission issued the Complaint after conciliation efforts failed.

5. Respondent Gosdanian is the owner, broker, and agent of Respondent Abbeyhill. (Tr. 13)

6. Respondent Abbeyhill manages properties for various owners, including property owned by Respondent Lyric. (Tr. 13)

7. Respondent Gosdanian also acted as an agent for Respondent Lyric. (Tr. 14)

8. Complainant began residing at an apartment managed by Respondent Abbeyhill at 2177 Pegg Road on August 3, 2015. (Tr. 17, 59)

9. Respondent Gosdanian renewed Complainant's lease and the second lease was from August 1, 2016 through July 31, 2017. (Tr. 17, 59, 102-103)

10. On February 27, 2017 Complainant filed a charge of discrimination with the Commission against Respondent and property manager Patty Williams (Williams).[2] (Tr. 60, 73, Comm. Exh. 6)

[2] The Commission found that there was no probable cause to believe that the Respondents engaged in discriminatory housing practices based on the Complainant's February 27, 2017 charge.

11. Complainant also identified Respondent Abbey Hill as the company who Respondent Gosdanian and Williams represented. (Id.)

12. Respondent Gosdanian received the charge on or around February 27, 2017. (Tr. 20, 214)

13. During the morning of April 22, 2017 around 9:30 AM Complainant was in her apartment with her boyfriend, Jayms McKinney (McKinney). (Tr. 61, 63)

14. Complainant and McKinney were eating breakfast and listening to music. (Id.)

15. Complainant heard banging on the kitchen wall between her apartment and her neighbor Kinzer. (Tr. 61-63)

16. Complainant went to her door and opened it to see what was going on and saw Toni Tyler (Tyler) standing in Kinzer's doorway. (Tr. 63)

17. Tyler lived in an apartment across the street from Complainant and Kinzer's apartments. (Tr. 145)

18. Complainant asked Tyler what was going on. (Tr. 63)

19. Tyler and Kinzer accused Complainant of having one of Kinzer's friend's car towed away because he didn't have a parking sticker. (Tr. 63, 146)

20. Complainant denied Tyler and Kinzer's accusation. (Tr. 63, 65)

21. Complainant closed her screen door and Kinzer stepped over to the screen door, making threatening verbal and physical gestures toward Complainant. (Tr. 63, 64)

22. Complainant closed her internal solid door. (Tr. 65, 67, 147)

23. As soon as the door was closed, Kinzer kicked the door in, splintering the door jamb and knocking the door off the hinges. (Tr. 65, 127, 147)

24. After Kinzer kicked the door in, he entered Complainant's apartment and continued to threaten Complainant. (Tr. 65)

25. McKinney intervened and pushed Kinzer out of the apartment. (Tr. 67, 149, 151)

26. While outside of the apartment, Kinzer continued to threaten Complainant and kicked the fender of her car. (Tr. 68-69)

27. The police came to the apartment complex and took a report from Complainant that listed Complainant as the victim and

Complainant's door and the right front fender of her car was listed under property damage. (Comm. Exh. 9)

28. A few minutes after the police left, Respondent Gosdanian arrived. (Tr. 73)

29. When Complainant asked Respondent Gosdanian to come into her apartment to talk about the incident he responded that he couldn't come into her apartment because of the charge that she filed. (Tr. 73)

30. Complainant told Respondent Gosdanian that she saw Kinzer kick in the door. (Tr. 23, 25, 43-44)

31. Respondent Gosdanian did not ask Complainant any questions after Complainant told him that she saw Kinzer kick in the door. (Tr. 74)

32. Afterwards Complainant saw Respondent Gosdanian go into Tyler's apartment. (Tr. 75)

33. Kinzer was inside of Tyler's apartment. (Id.)

34. Respondent Gosdanian stayed in Tyler's apartment between fifteen and twenty minutes then left. (Id.)

35. Respondent Gosdanian did nothing further regarding Complainant's allegations.

36. Respondent Gosdanian had to replace Complainant's interior door because it was damaged beyond repair.

37. Between 9:30 AM and 10:00 AM, Sunday, April 23, 2017, Tyler and Kinzer continued making verbally abusive statements to Complainant outside of Complainant's apartment. (Tr. 78)

38. On Monday April 24, 2017, Complainant went to the Franklin County Municipal Court and filed for a protection order against Kinzer and Tyler. (Tr. 79)

39. The court granted Complainant a temporary protection order. (Id.)

40. On the morning of Wednesday, April 26, 2017 McKinney arrived at Complainant's apartment between 6:30 and 7:30 AM. (Tr. 80, 154)

41. McKinney saw writing on Kinzer's door that spelled out "You got HIV bitch." (Tr. 31-32, Comm. Exh. 12)

42. When McKinney went into the apartment, Complainant was still in bed in her pajamas. (Tr. 80, 155)

43. McKinney told Complainant about the writing. (Tr. 81, 155)

44. Complainant told McKinney that she didn't have anything to do with the writing on the door. (Id.)

45. At approximately 8:30 AM Complainant heard loud knocking on her door. (Tr. 155-156)

46. The knocking was by Kinzer and Tyler who said that they were going to beat Complainant up for writing on the door. (Tr. 155-156)

47. McKinney told Kinzer and Tyler that Complainant did not write on the door as the writing was on the door when he came to the apartment that morning. (Tr. 156-157)

48. Complainant and McKinney left the apartment in McKinney's car to go shopping and were gone for about two hours. (Tr. 82-83, 157)

49. That same morning Respondent Gosdanian received a call from Kinzer who said that Tyler had informed him that Complainant had written on the door. (Tr. 28, 30, 199, 221)

50. When Respondent Gosdanian received the call, he was in the car with property manager Patty Williams (Williams). (Id.)

51. Williams was a party listed on the charge of housing discrimination that Complainant filed on February 27, 2017. (Comm. Exh. 6)

52. Respondent Gosdanian called the police while in route to the apartment. (Tr. 30)

53. The police arrived at the apartment a few minutes after Respondent Gosdanian and Williams arrived at 11:26 AM. (Tr. 34-35, Comm. Exh. 13)

54. Respondent Gosdanian filed a report with the police officers regarding the writing on Kinzer's door. (Tr. 34, Comm. Exh. 13)

55. Respondent Gosdanian took a photograph of the writing and obtained a written statement from Tyler. (Tr. 31-33)

56. The police report narrative states that "Reportee states that witness informed him that she observed suspect write in black ink "you got HIV bitch" on the entry door of apartment #A". (Comm. Exh. 13)

57. The police stayed for twenty minutes. (Tr. 34)

58. Respondent Gosdanian then made the decision to place a Notice to Leave Premises on Complainant's door without speaking to Complainant. (Tr. 35, 83-84, 223)

59. Respondent Gosdanian also filed a complaint with the Prosecutor's Office for criminal damaging. (Tr. 40-43, 45, Comm. Exh. 15)

60. When Complainant and McKinney returned from shopping, they found a Notice To Leave attached to her door. (Tr. 83, 117, 129, 157, Comm. Exh. 14)

61. Complainant contacted Respondent Gosdanian to ask why she received a Notice To Leave the premises. (Tr. 84, 117)

62. Respondent Gosdanian told Complainant that it was because of the writing on Kinzer's door. (Tr. 37, 84)

63. Complainant told Gosdanian that she did not put the writing on Kinzer's door. (Id.)

64. Respondent Gosdanian made no other effort to investigate the incident and covered up the writing on Kinzer's door with paint. (Tr. 37, 40)

65. Complainant paid her rent on May 1, 2017, but it was returned to her on May 3, 2017.

66. Respondent Gosdanian made a video recording of himself returning Complainant's rent payment to her. (Tr. 51, 234)

67. On May 5, 2017 Complainant placed her rent into escrow. (Tr. 52, 86-87)

68. Complainant filed a second charge with the Commission on May 8, 2017. (Tr. 87)

69. Respondent Gosdanian initiated eviction proceedings in municipal court against Complainant. (Tr. 19, 88, 218)

70. The eviction proceedings were initiated based on the handwriting on Kinzer's door that Tyler said was made by Complainant.

71. An injunction hearing was held in common pleas court to stop the eviction, but it was denied. (Tr. 52, 119, 239)

72. At the injunction hearing, Respondent Gosdanian brought three witnesses: Kinzer, Tyler, and Deborah Valentine (Valentine). (Tr. 53, 242-243)

73. Valentine was the Caucasian comparative named by Complainant in her first charge of discrimination. (Tr. 54, Comm. Exh. 5)

74. Respondent Gosdanian compensated the witnesses $250.00 in rent credits for their "time and wages lost" to attend the hearings. (Tr. 21-22, 53, Comm. Exh. 7 and 8)

75. On May 24, 2017 Complainant and Respondent Gosdanian agreed to a settlement of the Respondent's eviction complaint. (Tr. 52, 218, Comm. Exh. 14)

76. Complainant vacated the premises on July 2, 2017 per the settlement agreement.

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. The Commission alleges that Respondents engaged in unlawful retaliation against Complainant for filing a charge of discrimination in violation of R.C. 4112.02(H)(12).

2. These allegations, if proven, would constitute a violation of R.C. 4112.02 (H)(12) which provides in pertinent part that it is an unlawful discriminatory housing practice for any person to:

> "Coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person's having exercised or enjoyed any right granted or protected by division (H) of R.C. 4112.02."

3. The Commission has the burden of proof in cases brought under Revised Code 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(E) and (G).

5. Federal case law applies to alleged violations of Revised Code Chapter 4112. *Little Forest Med. Ctr. of Akron v. Ohio Civil Rights Comm.,* 61 Ohio St.3d 607, 609-610 (1991).

6. Therefore, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under the federal Fair Housing Act of 1968 (Title VIII), as amended. *See e.g. Howard v. City of Beavercreek*, 108 F. Supp. 2d 866, 876 (S.D. Ohio 2000) (applying FHAA analysis to state law fair housing claims where language of the relevant provisions of the two statutes was similar).

7. 42 U.S.C. 3617, the federal statutory counterpart to R.C. 4112.02 (H)(12), "reaches all practices which have the effect of interfering with the exercise of rights under the federal fair housing laws." *Michigan Protection and Advocacy Service Inc. v. Babin,* 18 F. 3d 337, 347 (6th Cir. 1994).

8. The federal courts have applied 42 U.S.C 3617 to cases analogous to the case at bar, i.e. cancelling employment contracts in retaliation for the advocacy of FHA rights (*Linkletter v. Western & Southern Financial Group, Inc.,* 851

F.3d 632), the termination of an African American real estate agent who complained to co-workers that her client had been rebuffed in attempting to purchase a house because of her race (*Hall v. Lowder Realty Co.,* 160 F.Supp.2d 1299 Inc. (U.S. Dist. Ct., Alabama 2001) and, prohibiting a resident of a subdivision from using the community facilities in addition to other malicious actions because the resident complained of disparate treatment based on national origin (*Mehta v. Beaconridge Improvement Ass'n 432* Fed.Appx. 614 (7th Cir Ct. of Appeals, 2011)

9. Under the burden shifting framework set forth in *McDonnell Douglas* the Commission is first required to establish a *prima facie* case of retaliation. *McDonnell Douglas Corp. v. Green* 411 U.S. 792, 793 (1973)

10. The establishment of a *prima facie* case creates a rebuttable presumption. *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 254 (1981).

11. The Commission may establish a *prima facie* case of retaliation by either direct or circumstantial evidence. *Younis v. Pinnacle Airlines, Inc.* 610 F.3d 359, 363 (6th Cir. 2010).

> Direct evidence of discrimination is "that evidence which, if believed, requires the conclusion that unlawful discrimination was at least a motivating factor in the [housing provider's] actions."

Circumstantial evidence, on the other hand, is proof that does not on its face establish discriminatory animus but does allow a factfinder to draw a reasonable inference that discrimination occurred. *Wexler v. White's Fine Furniture, Inc.*, 317 F.3d 564, 570 (6th Cir. 2003), *quoting Jacklyn v. Schering-Plough Healthcare Prods. Sales Corp.*, 176 F.3d 921, 926 (6th Cir. 1999).

12. To establish the elements of a prima facie case of retaliation, the Commission must introduce credible evidence that:

    (1) Complainant engaged in a protected activity;

    (2) Respondent was aware that the Complainant had engaged in that activity;

    (3) Respondent took an adverse action against the Complainant; and

    (4) There is a causal connection between the protected activity and adverse action.

    Greer-Burger v. Temesi, 116 Ohio St.3d 327 at para. 13 citing *Canitia v. Yellow Freight Sys., Inc.* (C.A. 6, 1990), 903 F.2d 1064, 1066.

13. The Complainant engaged in a protected activity under R.C. 4112.02(H) when she filed a charge of housing discrimination on February 17, 2017. (Tr. 60, 73-74, Comm. Exh. 6)

14. Respondents had notice of Complainant's charge of discrimination when Respondent Gosdanian became aware of

Complainant's charge on or around February 27, 2017. (Tr. 13-14, 20).

15. Respondent Gosdanian took an adverse action against Complainant when he served her with a Notice to Leave on April 27, 2017 and initiated eviction proceedings. (Tr. 36, Comm. Exh. 14)

16. The Notice to Leave was served upon Complainant less than two months after she filed a charge of discrimination against Respondents.

17. The Commission established that there is a causal connection based on the length of time between the protected activity and the adverse action.

> The temporal relationship between a [tenant's] participation in protected activities and a [housing provider's] alleged retaliatory conduct is an important factor in establishing a causal connection. *Nguyen v. City of Cleveland*, 229 F.3d 559, .563 (6th Cir. 2000).

18. The Commission has therefore established a prima facie case of retaliation.

19. The burden then shifts to Respondent to articulate some legitimate nondiscriminatory reason for its adverse action against Complainant. *McDonnell Douglas*, 411 U.S. at 802

20. Respondent met its burden of production with the introduction of evidence that Respondent Gosdanian believed Tyler because she was an eyewitness who appeared to be independent of the conflict between Complainant and Kinzer.

21. The presumption of unlawful retaliation created by the establishment of a prima facie case "drops out of the picture" when the Respondent articulates a legitimate, nondiscriminatory reason for its action. *St. Mary's Honor Center v. Hicks,* 509 U.S. 502 at 511 (1993).

22. Commission must then show by a preponderance of the evidence that Respondent's articulated reasons for initiating eviction proceedings against Complainant were not the true reasons but were a "pretext for... [unlawful retaliation]." Quoting Burdine, 450 U.S. at 253.

> [A] reason cannot be proved to be a "pretext for ... [unlawful retaliation]" unless it is shown *both* that the reason was false, *and* that ... [unlawful retaliation] was the real reason.
>
> *Hicks, supra* at 515, 62 FEP Cases at 102.

23. In the instant case the Commission alleges that Respondents reasons for taking an adverse action against Complainant are pretextual.

24. The Commission introduced evidence that Kinzer, who had not filed a charge of discrimination against Respondents, was treated more favorably than Complainant in the manner in which Respondent Gosdanian conducted investigations into how the damage occurred to their apartment doors. *Nguyen v. City of Cleveland*, 229 F.3d 559, 563 (6th Cir. 2000)

25. The Commission also introduced evidence to show that Respondent Gosdanian's reliance on Tyler being an objective, independent witness was a subterfuge to justify his decision to serve Complainant with a notice of eviction.

26. In order to show pretext, the Commission may directly or indirectly challenge the credibility of Respondent's articulated reasons for taking an adverse action against Complainant.

27. The Commission may directly challenge the credibility of Respondent's articulated reasons by showing that the reasons had no basis *in fact,* or they were *insufficient* to motivate the [housing] decision. *Manzer v. Diamond*

Shamrock Chemicals Co., 29 F.3d 1078, 1084 (6th Cir. 1994).

28. Such direct attacks, if successful, permit the fact-finder to infer intentional discrimination from the rejection of the reasons without additional evidence of unlawful discrimination.

> The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may together with the elements of the *prima facie* case, suffice to show intentional discrimination ... [n]o additional proof is required.[3]

Hicks, supra at 511, 62 FEP Cases at 100 (emphasis added).

29. The Commission must prove that the adverse action would not have occurred "but for" Respondent having engaged in unlawful retaliation. *Univ. of Tex. Sw. Med. Ctr. v. Nassar,* 133 S. Ct. 2517, 2533, 186 L.Ed. 2d. 503 (2013)

30. Although Respondent Gosdanian told Complainant over the phone on April 22, 2017 that he would come and investigate

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[3] Even though rejection of a respondent's articulated reason is "enough at law to *sustain* finding of discrimination, *there must be a finding of discrimination.*" *Hicks, supra* 2749, 62 FEP Cases at 100, n.4.

the damage to her door, after he arrived he did not ask her any questions, did not call the police to make a report, and refused to come into Complainant's apartment to talk to her.

> Q: Okay. What happened when Mr. Gosdanian arrived?
>
> A: I had asked Mr. Gosdanian if he could step into my apartment to talk to me because I was still feeling threatened at the time since the police were no longer there and Mr. McKinney was no longer there, my boyfriend. Mr. Gosdanian told me he couldn't come in because I had a previous charge on him, so he couldn't talk to me in my apartment. (Tr. 73)

31. After Respondent Gosdanian left Complainant's apartment he went over to Tyler's apartment where Kinzer was and went inside the apartment and stayed for approximately fifteen (15) to twenty (20) minutes and then left. (Tr. 75)

32. On April 26, 2017, based on a telephone call from Kinzer wherein Kinzer told Respondent Gosdanian that Tyler had observed Complainant defacing Kinzer's door, Respondent Gosdanian decided that Complainant had written on Kinzer's door without first having talked to Complainant.

33. Although Complainant denied defacing Kinzer's door, Respondent Gosdanian let Complainant know that her denial was of no interest to him.

> Q: Okay. Did you speak with—what did you do after you came home and found this on your door?
>
> A: I attempted to call Mr. Gosdanian and to let him know that, you know, why did I receive a three-day notice for something that I didn't do.
>
> Q: Okay
>
> A: And he told me that he was a witness to me writing on the door and that he had a witness seeing me write on the door. And like I told him, I didn't do it. And he said he didn't care, he wanted me out. (Tr. 84)

34. I find Complainant's testimony credible about Respondent Gosdanian's statements to her on April 22nd and 26th.

35. Respondent Gosdanian testified that he gave the witnesses $250.00 was for their time and wages lost.

36. Tyler testified that she received the $250.00 for overpaying her rent. (Tr. 21-23, 52, 193-194, 218)

37. Respondent Gosdanian and Tyler gave conflicting testimony regarding the reason for the payment of the $250.00 fee.

38. Tyler also testified that she gave a statement to the police officer that was written by the officer and signed by Tyler on April 26, 2017. (Tr. 191-192, Resp. Exh. C)

39. The statement is dated May 2, 2017. (Id.)

40. I generally found Respondent Gosdanian's and Tyler's testimony to be incredible.

41. By not questioning Complainant about her version of the events on April 22, 2017, or listening to any defense by Complainant on April 26, 2017 regarding the writing on the door, it is reasonable to infer that Respondent Gosdanian was insulating himself from having direct knowledge that Tyler was a confederate with Kinzer in harassing and threatening Complainant.

42. During the Commission's investigation of the complaint, Respondent Gosdanian could not conceal the fact that Complainant's charge was on his mind when he put the three day notice on Complainant's door.

43. Andrew Seifert (Seifert), investigator for the Commission, interviewed Gosdanian for approximately one (1) hour during the latter part of August 2017. (Tr. 170)

> Q: Okay. And did Mr. Gosdanian tell you about –is there anything else that he told you about his decision to write on—to put the notice on Ms. Brinkley's door?
>
> A: I remember in his explanation he was—he did mention he took into consideration the fact that she had a pending charge that she had previously filed, that was the charge filed in February, and that was on his mind at the time when he gave her the three-day notice. (Tr. pp. 173-174)

44. It's reasonable to infer from the credible evidence in the record that Respondent Gosdanian engaged in an elaborate scheme to evict Complainant because she filed a charge against Respondents on February 27, 2017.

45. The Commission presented credible evidence that Respondent Gosdanian would not have taken an adverse action against Complainant but for an illegal retaliatory motive in violation of R.C. 4112.02(H)(12) and the Complainant is therefore 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

in moving and storage expenses, and $861.75 for emotional distress and humiliation).

5. Damages for intangible injuries may be established by testimony or inferred from the circumstances.[4] *Seaton v. Sky Realty Co., Inc.*, 491 F.2d 634, 636 (7th Cir. 1974).

6. In this case, the Commission presented credible evidence that Respondents' retaliatory conduct caused Complainant actual damages.

Out of Pocket Damages

7. Complainant was forced to move from her Lyric apartment where the rent was $500.00 per month. (Tr. 89)

8. Complainant moved into an apartment that she resided in at the time of the hearing where the rent was $569.00 per month. (Tr. 60, 88-89)

[4] Although emotional injuries are difficult to quantify, "courts have awarded damages for emotional harm without requiring proof of the actual value of the injury." *HUD v. Paradise Gardens*, P-H: Fair Housing-Fair Lending Rptr. ¶25,037, 25,393 (HUD ALJ 1992), *citing Block v. R. H. Macy & Co.*, 712 F.2d 1241, 1245 (8th Cir. 1983) (other citations omitted). The determination of actual damages from such injuries "lies in the sound discretion of the Court and is essentially intuitive." *Lauden v. Loos*, 694 F.Supp. 253, 255 (E.D. Mich. 1988).

9. The amount of increased rent that the Complainant paid from June 2017 to the date of the hearing is $1,242.00 ($69.00 x 18 months).

Intangible Damages

10. The Commission introduced credible evidence of the emotional distress that Complainant suffered as a result of being forced to leave her apartment.

11. The Complainant was subjected to threats and harassment as a part of Respondent Gosdanian's elaborate scheme to retaliate against Complainant because she filed a charge of housing discrimination against Respondents. (Tr. 63, 65, 68-69, 78-79, 127, 146-147)

12. As a part of Respondent Gosdanian's scheme to evict Complainant he intentionally failed to conduct an objective investigation into the circumstances that led to the damage of the doors on April 22 and 26, 2017.

13. Complainant experienced stress and depression because of the uncertainty of what would happen next and whether or not she would be able to continue living in her apartment that she had lived in since August 3, 2015. (Tr. 17, 59, 84-85, 91-92))

14. Respondent Gosdanian's retaliatory conduct was blatant and egregious.

15. The ALJ recommends that Complainant be awarded $1,242.00 for out of pocket damages and a total amount of $10,000.00 for the emotional distress and humiliation that Complainant suffered as a result of Respondent Gosdanian's illegal retaliatory conduct.

Civil Penalties

16. 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).

17. 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.)

18. Courts have wide discretion in assessing civil penalties. *Memphis Ctr. for Indep. Living v. Richard & Milton Grant Co.*, 2004 WL 6340158 (W.D. Tenn.)

19. 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.*

20. Applying the foregoing criteria to this case:

- Respondent Gosdanian's behavior was outrageous. He could not conceal his retaliatory motive by the statements that he made to Complainant one on one and his confession to Seifert about what was on his mind when he placed the three-day notice on Complainant's door.

- The credible evidence supports a reasonable inference that Respondent planned an elaborate scheme to carry out his goal to manufacture a reason to terminate Complainant's tenancy.

- There was no evidence introduced by the Commission of prior violations by the Respondents.

- The Commission introduced evidence that Respondent Abbeyhill manages approximately 1,100 units. (Tr. 243)

- The Commission has a substantial interest in seeking to deter Respondents' retaliatory conduct and to deter all housing providers from engaging in retaliatory conduct to intimidate individuals who have exercised their rights under R.C. 4112.02(H).

21. Based on the foregoing criteria, the ALJ recommends that Commission be assessed $8,000.00 in civil penalties.

ATTORNEY'S FEES

22. 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. [5]

23. In the instant case the Commission is the prevailing party.

24. If the parties cannot agree on the amount of attorney's fees, the parties shall present evidence in the form of affidavits.

25. In order to create a record regarding attorney's fees, the Commission should file an affidavit from plaintiff's attorneys in Franklin County, Ohio regarding the reasonable and customary hourly fees they charge in housing discrimination

[5] 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)

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.

26. If the Commission adopts the ALJ's Report and the parties cannot agree on the amount of attorney's fees, the Commission should file an Application for Attorney's Fees within 30 days after the ALJ's Report is adopted. Respondents may respond to the Commission's Application for Attorney's fees within 30 days from their receipt of the Commission's and Complainants' Applications.

27. Meanwhile, any objections to this Report should be filed pursuant to the Ohio Administrative Code. Any objections to the recommendation of attorney's fees can be filed with the Commission's Compliance Unit after the ALJ makes her Supplemental Recommendation to the Commission Regarding Attorney's Fees.

RECOMMENDATIONS

For all the foregoing reasons, it is recommended in Complaint No. 14-HOU-COL-45201 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 Complainants $11,242.00 in actual damages;

3. The Commission orders Respondents to pay the Commission $ 8,000.00 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: June 4, 2019