

2011 WL 3875344 (MCAD)

Massachusetts Commission Against Discrimination

***1** MCAD AND MARY **GARDNER**, COMPLAINANTS
v.
A-TEAM REALTY, INC. AND RYAN WILLIAMS, RESPONDENTS

Docket No. 09-SPR-02817

August 22, 2011

APPEARANCE:

Jane L. Edmonstone, Esq. for Complainant **Gardner**

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 29, 2009, Mary **Gardner** ("Complainant") filed a complaint with the Massachusetts Commission Against Discrimination charging that she was the victim of family status discrimination in housing in violation of [M.G.L. c. 151B sections 4\(4A\), 4\(5\), 4\(7B\), and 4\(11\)](#) and [c. 111, sections 199A](#), due to her unsuccessful attempt to rent an apartment for herself and her children. Complainant asserts that on or about August 5, 2009, she called A-Team Realty ("Respondent") in response to an internet advertisement for an apartment in Worcester, was told by a rental agent that he needed to find a "suitable" apartment without lead paint, and never received any further communication from the agent.

The MCAD issued a probable cause finding on March 25, 2010 and certified the case for public hearing on January 13, 2011. A public hearing was conducted on June 24, 2011. Complainant introduced four (4) exhibits into evidence. The following witnesses testified: Mary **Gardner**, Leticia Medina-Richman, a Worcester Fair Housing Project tester,^[FN1] Walter Aldrich, and Ryan Williams. Respondents were unrepresented at the hearing and appeared pro se.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, the testimony is rejected.

II. FINDINGS OF FACT

1. Complainant Mary **Gardner** lives in a rental unit at 66 Juniper Court in Greenfield, MA with her three children born in 2001, 2002, and 2004.
2. Respondent A-Team Realty is a real estate company in Worcester, MA owned by Walter Aldrich. The Company arranges for the rental of apartments and houses in the Worcester, MA area. Aldrich testified that he operates the business out of his mother's house. At the time of public hearing, Aldrich claimed that he did not own a car and had to borrow his mother's car in order to show apartments to prospective tenants.
3. Respondent Ryan Williams, at the time of the events at issue, was a rental agent with A-Team Realty.
4. In June or July of 2008, Leticia Medina-Richman, staff attorney at the Legal Assistance Corporation of Central Massachusetts and Project Coordinator for Worcester Fair Housing Project, saw an advertisement on Craig's List which she deemed to be facially discriminatory. It stated: "Large 3 bedroom with hardwoods [sic] and nice tile not dealeded so no young children nice safe quite [sic] area call Ryan at A-Team Realty 774-4852. Many more listings avail-

able." Complainant's Exhibit 2.

*2 5. According to Aldrich, the Craig's List ad which described an apartment as "not deleaded so no young children" was placed by his former employee Ryan Waugh. Aldrich testified that he did not see the ad prior to Waugh posting it and when he saw it, he told Waugh to take it down because it was discriminatory. I do not credit Aldrich's testimony that he was unaware of the ad prior to its posting and that he told Waugh to take it down.

6. Aldrich testified that he shows apartments to prospective tenants whether or not they are deleaded, but he also stated that it is a waste of his time and gas to show prospective tenants rental units that they are not going to want because of the presence of lead paint.

7. Medina-Richman testified that after she saw the "not deleaded so no young children" ad on Craig's List, she reviewed various other advertisements posted by A-Team Realty, some of which stated that apartments were deleaded and others which did not mention the presence or absence of lead paint.

8. Part of Medina-Richman's job as program coordinator of the Worcester Fair Housing project involves finding and training people to become "testers," i.e., those who hold themselves out as interested in renting apartments in order to determine if real estate agents or owners are engaging in discrimination. Medina-Richman assigns testers to situations which she thinks may involve discrimination.

9. Medina-Richman assigned several testers to A-Team Realty. When Medina-Richman makes an assignment, she provides a tester with the text of the Craig's List ad, information about whom to contact, and a profile of the identity the tester is to assume (i.e., marital status, age, income).

10. One of the testers whom Medina-Richman assigned to investigate A-Team ads on Craig's List was a male individual, approximately seventy-two years old, whose profile included a wife and an adult, pregnant daughter. Medina-Richman made the assignment in November of 2008.

11. The male tester called A-Team Realty in response to a Craig's List apartment ad dated November 24, 2008. Complainant's Exhibit 3. At the public hearing, the tester did not recognize either Ryan Williams or Walter Aldrich. According to the tester's report form,^[FN2] he called A-Team on November 26, 2008, left a message that day, and another on November 28, 2008. Id. The report form states that the tester spoke to "Ryan" on November 30, 2008 who said that "lead paint is an issue" in regard to a question about the tester's daughter. Id. At the public hearing, the tester testified that Ryan Williams told him that A-Team Realty did not rent leaded apartments to people with newborns or young children. I credit this testimony.

12. A-Team Realty owner Walter Aldrich testified that he, not Ryan Williams, met with the tester and showed him apartments. Aldrich testified that he showed the tester apartments without regard to whether they contained lead paint. I do not credit this testimony.

*3 13. On or about August 5, 2009, Complainant Mary **Gardner** called Respondent A-Team Realty, Inc. about its advertisement on Craig's List and left a message expressing an interest in the advertised apartments. Complainant's Exhibit 1. **Gardner** has three children born in 2001, 2002, and 2004. At the time she made the call, Complainant was living at 66 Juniper Court in Greenfield, MA.

14. On or about August 6, 2009, Complainant received a return call from Ryan Williams. Complainant told him that she was looking for a first floor, three-bedroom apartment in Worcester, MA for herself and her children who were eight, six and five at the time. According to Complainant, Ryan said he would look for an apartment "suitable for her children," but said that he didn't think he could find one because it would have to be lead-free, and never called her back. Williams testified that when he spoke to **Gardner** over the phone, she asked for a first floor apartment with three bedrooms with utilities for \$800.00 or \$900.00 per month, in response to which he said that such an apartment "didn't exist" in Worcester. I credit **Gardner's** version of the phone call over the version described by Williams.

15. Williams testified that even if an apartment did not satisfy Section 8 lead paint standards, he would still communicate the information to a prospective tenant with young children and allow the individual to decide if he/she was still interested in seeing the unit. Williams testified that he did so even though it wasted his time and gas and was "foolish" for individuals to look at nonconforming apartments because of the length of time it would take for a landlord to bring the apartment into compliance. According to Williams, he did not discourage potential tenants with young children from seeing nonconforming apartments because the alleged tenant could be a tester trying to "trick" him. I do not credit Williams' testimony that he showed non-conforming apartments to prospective tenants with young children due to his alleged fear of testers.

16. Complainant testified that she felt "a little frustrated," "depressed," and "mad," about her interaction with A-Team Realty, but she acknowledged that she did not contact any other real estate companies regarding an apartment in Worcester. At the time of the public hearing, two years after her contacts with Respondents, Complainant was still living at Juniper Court in Greenfield, MA.

17. Respondent Ryan Williams testified that he stopped working as a real estate agent in January of 2011 and at the time of public hearing worked at the Goddard School for children with "Spectrum" disorders.

III. CONCLUSIONS OF LAW

The Massachusetts lead paint law states, in relevant part, that it shall be an unlawful practice for a real estate broker to refuse to sell, rent, lease, or otherwise deny to or withhold premises from any person because of lead paint and that the refusal to rent to families with children in violation of [Chapter 151B, section 4](#)(11) shall not constitute compliance with the lead law. See [M.G.L. ch. 111, sections 199A](#) (a), (b), & (c). These sections make it illegal for a rental agent to decline to show an apartment to an adult with young children due to the fact that the premises may contain dangerous levels of lead paint. See [Hartmann v. Group Boston Real Estate](#), 21 MDLR 157 (1999); [Knight v. Yee Chang Lui](#), 18 MDLR 175 (1996). Respondents are statutorily prohibited from steering families with young children away from rental units with lead paint because such rental properties might be of interest to prospective tenants provided steps were taken to remove the health hazard.

***4** In order to prove a case of lead paint housing discrimination under the provisions cited above, Complainant must demonstrate that: 1) she was a member of a protected class at the time of the alleged discriminatory act; 2) she sought to rent housing that was available for rent; 3) she was objectively qualified to rent the housing; and 4) she was deterred from renting and/or refused tenancy because of membership in a protected class. See [Brennan v. Hong](#), 31 MDLR 129 (2009) (setting out elements of prima facie case of lead paint/housing discrimination); [Smith v. Cao](#), 29 MDLR 179 (2007) (same); [Garay v. Soumas](#), 13 MDLR 1065, 1081-82 (1991) (same).

Complainant has satisfied the burden of establishing a prima facie case of unlawful housing discrimination based on the presence of lead paint. She was, at the time in question, the mother of children aged six and under and, thus, a member of a protected class under [M.G.L. ch. 111, section 199A](#) (a) (b) (c) and [ch. 151B, section 4](#) (11). Complainant, in an effort to move to the City of Worcester, inquired about apartments being shown by Respondents. She was arguably qualified to rent but was prevented from doing so by Respondents' failure to show her apartments that may have contained lead paint.

Once Complainant establishes a *prima facie* case, the burden shifts to Respondents to articulate a legitimate, non-discriminatory reason for their actions. See [Wheelock v. MCAD](#), 371 Mass. 130, 136 (1976). Such a reason was offered by Respondent Ryan Williams who claims that Complainant made unrealistic demands about the rental price which caused him not to return her calls. Williams denies that he declined to show Complainant apartments containing lead paint which,

had she sought to rent them, could have caused friction between A-Team Realty and its clients, i.e., landlords who would then be faced with lead paint removal costs.

I do not accept Respondents' alleged non-discriminatory reason for its action because it is contradicted by an A-Team website posting which explicitly stated in 2008 that units containing lead paint were unavailable to families with young children. A-Team Realty owner Walter Aldrich asserted at the public hearing that he was unaware of the posting and that he arranged for it to be taken down when he saw it, but his testimony was not credible. Respondents' position is also undermined by the credible testimony of a tester from the Worcester Fair Housing Project who contacted A-Team Realty about rental units on behalf of a fictional family consisting of two parents and a pregnant, adult daughter. According to the tester, Williams told him that A-Team Realty did not rent leaded apartments to people who with young children or those expecting infants.

***5** A-Team Realty owner Walter Aldrich and real estate associate Ryan Williams acknowledged their belief that it was a waste of time and gas to show prospective tenants with children rental units they would not want because of the presence of lead paint and the length of time required to remove such paint. They claimed that they showed the units anyway, but the more persuasive evidence is that they refrained from doing so in order to maximize the chances of making a match between prospective tenants and available units and to minimize the possibility of antagonizing landlords. Based on the foregoing, I conclude that Respondents violated [M.G.L. ch. 151B, sections 4\(5\), 4\(7B\), 4\(11\)](#) and [ch. 111, section 199A](#).

IV. REMEDY

As far as emotional distress damages are concerned, an award may be based on a Complainant's testimony concerning emotional distress provided it is causally-connected to the unlawful act of discrimination. See [Stonehill College v. MCAD, 441 Mass. 549, 576 \(2004\)](#). Factors to be considered are the nature, character, severity, and duration of the harm and whether Complainant attempted to mitigate the harm. *Id.*

Complainant's testimony in support of emotional distress damages in this case consists of statements that she felt "a little frustrated," "depressed," and "mad," about her interaction with A-Team Realty. She acknowledged, however, that she did not contact any other real estate companies. At the time of the public hearing, more than two years after her contact with Respondents, Complainant was still living at Juniper Court in Greenfield, MA. Thus, aside from one phone call to A-Team Realty, Complainant made little if any effort to find an apartment in the Worcester area. Complainant's lack of effort to secure an apartment and her lack of visible emotion at the public hearing contribute to my conclusion that her damages were minimal. Based on the foregoing, I conclude that Complainant is entitled to \$ 500.00 in emotional distress damages.

V. ORDER

This decision represents the final order of the Hearing Officer. Respondents are hereby ORDERED to:

(1). Cease and desist from the discriminatory practices set forth herein.

(2). Pay to Complainant, within sixty (60) days of receipt of this decision, the sum of \$500.00 in emotional distress damages, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

(3) Attend, at their own expense, housing discrimination prevention training within ninety days

of this hearing decision.^[FN3] Said training shall be conducted by the Commission or by a trainer who has completed the MCAD-certified housing discrimination train-the-trainer course. Within one month of training session, Respondents must submit documentation of compliance with this agreement to the MCAD Director of Training. The documentation must be signed by the trainer, identifying the training topics, and the date and time of the training session. The MCAD retains jurisdiction over this training requirement for the purposes of enforcement.

***6** This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 22nd day of August, 2011

Betty E. Waxman, Hearing Officer

FN1. In order to protect the identity of the tester, a Protective Order was executed by the parties and the Commission. Pursuant to the protective order, the tester will not be referred to by name in this decision.

FN2. The report is part of a packet of Investigatory documents which were offered into evidence by Complainant's counsel and accepted as Complainant's Exhibits 3 & 4 pursuant to section 803 (6) (A) of the Massachusetts Guide to Evidence (SJC Advisory Committee, 2011 Edition). The Massachusetts Guide to Evidence specifies that a business record shall not be inadmissible because it is hearsay or self-serving if the court finds that: (i) the entry, writing, or record was made in good faith; (ii) it was made in the regular course of business; (iii) it was made before the beginning of the civil or criminal proceeding in which it is offered; and (iv) it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event, or within a reasonable time thereafter.

I conclude that the investigatory documents, which consist of rental test assignment forms and testers' report forms, fulfill the above requirements. The Housing Project collects approximately one hundred such reports (i.e., "narratives") yearly. This is a sufficient basis on which to conclude that they were generated in good faith and in the regular course of business, prior to the beginning of this civil proceeding.

In addition to investigatory reports, Complainant's counsel sought to submit affidavits of testers in lieu of live testing. Such submissions were denied in response to which one of the testers appeared at the public hearing and testified under oath and subject to cross-examination.

FN3. The training requirement applies to Respondent Walter Aldrich, A-Team Realty rental associates and employees, and Respondent Ryan Williams to the extent he intends now, or in the future, to engage in the rental of real estate on behalf of A-Team Realty or any other real estate company.

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