



**Division of  
Human Rights**

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**  
on the Complaint of

**HOUSING OPPORTUNITIES MADE EQUAL, INC.  
(H.O.M.E.),**

Complainant,

v.

**KATE LI,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10170305

**PLEASE TAKE NOTICE** that the attached is a true copy of the Recommended Findings of Fact, Opinion and Decision, and Order (“Recommended Order”), issued on January 15, 2016, by Martin Erazo, Jr., an Administrative Law Judge of the New York State Division of Human Rights (“Division”). An opportunity was given to all parties to object to the Recommended Order, and all Objections received have been reviewed.

**PLEASE BE ADVISED THAT, UPON REVIEW, THE RECOMMENDED ORDER IS HEREBY ADOPTED AND ISSUED BY THE HONORABLE HELEN DIANE FOSTER, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENT:**

- In the last full paragraph on Page 7 of the Recommended Order, the fourth

sentence should read “Respondent did not show the upstairs unit to Complainant because its tester had children.”

In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original Notice or Petition with the Division.

**ADOPTED, ISSUED, AND ORDERED.**

DATED: **FEB 24 2016**  
Bronx, New York

  
HELEN DIANE FOSTER  
COMMISSIONER



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on the Complaint of

**HOUSING OPPORTUNITIES MADE  
EQUAL, INC. (H.O.M.E.),**

Complainant,

v.

**KATE LI,**

Respondent.

**RECOMMENDED FINDINGS OF  
FACT, OPINION AND DECISION,  
AND ORDER**

Case No. **10170305**

**SUMMARY**

Complainant, a fair housing agency, established that Respondent refused to rent to families with children. Complainant is awarded compensatory and punitive damages. A civil fine and penalty is also assessed against Respondent.

**PROCEEDINGS IN THE CASE**

On July 28, 2014, Complainant filed a verified complaint with the New York State Division of Human Rights (“Division”), charging Respondent with unlawful discriminatory practices relating to housing in violation of N.Y. Exec. Law, art. 15 (“Human Rights Law”).

After investigation, the Division found that it had jurisdiction over the complaint and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Martin Erazo, Jr., an Administrative Law Judge (“ALJ”) of the Division. Public hearing sessions were held on April 15, June 19, and July 31, 2015.

Complainant and Respondent appeared at the hearing. The Division was represented by Richard J. Van Coevering, Esq., Senior Attorney. Respondent was represented by John J. Lavin, Esq.

#### **FINDINGS OF FACT**

1. Complainant is a not-for-profit civil rights organization, founded in 1963, comprised of approximately 400 dues-paying members. (Tr. 39-40)
2. Complainant has members who are families with children. (Tr. 48)
3. Complainant has economic resources from family membership dues, at \$40 a year, and individual membership dues, at \$30 a year. Complainant also receives contributions from its members at significantly higher levels. (Tr. 48)
4. Complainant's mission is to eliminate housing discrimination through outreach, education, and dispute resolution services. (Tr. 39)
5. Scott W. Gehl is Complainant’s executive director. (Tr. 37)
6. Deanna Eason is Complainant’s associate director. (Tr. 65)
7. Jennifer Metzger was Complainant’s staff attorney. (Tr. 45; Complainant’s Exh.1)

8. Respondent owns a residential rental property at 300 Windermere Drive, Amherst, New York 14226 (“300 Windermere”). (Tr. 116)

9. Respondent does not own any other rental properties. (Tr. 115-16, 148)

10. 300 Windermere is a two-story house with a three-bedroom downstairs apartment and a two-bedroom upstairs apartment. (Tr. 116-18; Respondent’s Exhs. 5, 6)

11. Respondent also has a one-room business office on the second floor. (Tr. 118, 120-21; Respondent’s Exh. 6)

12. The tenants in the downstairs apartment were three college students. (ALJ’s Exh. 3, p.7)

13. On March 6, 2014, Respondent advertised the upstairs two-bedroom apartment for rent on the Craigslist website. (Tr. 121-22; Respondent’s Exh. 1)

14. Respondent’s advertisement stated that the two-bedroom apartment was available for a monthly rent of \$750 plus a security deposit of \$950. The rent included water and electricity. (Respondent’s Exh. 1, p.1)

15. Respondent’s advertisement also stated that the two-bedroom apartment was near the Amherst school district, the University at Buffalo campuses, and the Boulevard Mall. (Respondent’s Exh. 1, p.1)

16. The advertisement indicated that any interested applicant could contact Respondent by calling her cell phone number, (716) 444-5661. (Respondent’s Exhs. 1, 2)

17. On March 13, 2014, Respondent modified the advertisement on the Craigslist website to include the phrase: “Looking for party of one or two people, no pets please!” (Tr. 123-24; Respondent’s Exh. 1, p.2)

18. On March 20, 2014, Kristen Beaver, an employee of Belmont Housing Resources of Western New York Inc., informed Metzger that Respondent may be engaged in unlawful familial status discrimination given the restrictive occupancy language used in the advertisement. (Tr. 40; Complainant's Exh. 2)

19. Complainant uses testing to verify if a rental provider is engaging in discriminatory practices. The person acting as a tester assumes an identity that matches the characteristics of the person who made the complaint, calls or visits the owner of the property in question, and inquires about renting the property. (Tr. 65-67)

20. Sandra Emmordino works as a fair housing tester for Complainant. (Tr. 77)

21. Emmordino was assigned to test the availability of an apartment at 300 Windermere, posing as a married person. (Tr. 80)

22. On March 20, 2014, Emmordino called and left a message on Respondent's cell phone (716) 444-5561 stating her interest in the available apartment. (Tr. 79; ALJ's Exh. 5)

23. Respondent returned Emmordino's call and identified herself as the landlord. (Tr. 79)

24. Respondent asked Emmordino how many people were seeking to occupy the apartment. Emmordino replied that the apartment was for herself and her husband. (Tr. 80; ALJ's Exh. 5)

25. Respondent told Emmordino, "We don't take kids." (Tr. 80; ALJ's Exh. 5)

26. Respondent invited Emmordino to immediately view the apartment, but Emmordino declined on the grounds of a scheduling conflict at that time. (Tr. 79; ALJ's Exh. 5)

27. On March 24, 25, 26, 2014, Emmordino left voicemail messages with Respondent in order to view the apartment. (Tr. 79; ALJ's Exh. 5)

28. On March 27, 2014, Respondent informed Emmordino that the unit had been rented to a couple. (Tr. 79; ALJ's Exh. 5)

29. Lisa Nestico works as a fair housing tester for Complainant. (Tr. 100, 102)
30. Nestico was assigned to test the availability of an apartment at 300 Windermere, posing as a single mother with twin boys. (Tr. 103-04)
31. On March 21, 2014, Nestico called Respondent's cell phone number listed in Respondent's advertisement, (716) 444-5561. (Tr. 102-03, 147; ALJ's Exh. 6)
32. During the March 21, 2014 telephone conversation, Nestico spoke with a female who did not identify herself. (Tr. 104-05)
33. However, during the course of the public hearing Respondent acknowledged that Nestico had spoken with her. (Tr. 147)
34. Nestico informed Respondent that she wanted the apartment for herself and her two sons. (Tr. 104)
35. Respondent denied Nestico an opportunity to view the apartment after asking Nestico who would be living in the unit. (Tr. 102-04; ALJ's Exh. 6)
36. Respondent told Nestico that she only wanted one or two people in the upstairs apartment because there were tenants living downstairs and terminated the telephone call. (Tr. 104)
37. On April 1, 2014, Respondent rented the upstairs apartment at 300 Windermere to Danielle Hanna and her fiancé, a couple with no children. (Tr. 142, Respondent's Exh. 7)
38. Complainant diverted resources, including the staff salaries of Gehl, Eason, and Metzger, and payment to the testers, to investigate and prepare the filing of this complaint against Respondent. (Tr. 45-46, 48, 51-55, 68-69; Complainant's Exh. 1)
39. Complainant expended a total of \$319 in parking, fees, and stipends, for its testers, in the investigation of this complaint. (Tr. 45-48, 54, 68; Complainant's Exhs. 1, 2)

40. Complainant expended a total of \$1640 in paralegal time and \$1437 in staff attorney time, in the investigation of this complaint. (Tr. 45-48, 54, 68; Complainant's Exhs. 1, 2)

### **OPINION AND DECISION**

It is an unlawful discriminatory practice for the owner, managing agent, or other person having the right to rent or lease a housing accommodation to deny housing to any person on the basis of familial status. N.Y. Exec. Law, art. 15 ("Human Rights Law") § 296.5 (a)(2).

An advocacy organization, such as Complainant, has standing to file a complaint of discrimination under the Human Rights Law. *National Organization for Women v. State Div. of Human Rights*, 34 N.Y.2d 416, 419-20, 358 N.Y.S.2d 124, 127 (1974). Complainant has the burden to establish a prima facie case of discrimination. Complainant must show that its constituents are members of a protected class, that they were qualified to rent the housing in question, that they were denied the opportunity to rent the housing, and that the denial occurred under circumstances giving rise to an inference of discrimination. *Dunleavy v. Hilton Hall Apartments Co., LLC*, 14 A.D. 3d 479, 480, 789 N.Y.S. 2d 164, 165 (2d Dept. 2005). If Complainant establishes a prima facie case, Respondent must articulate a legitimate, non-discriminatory reason for their actions. If Respondent does so, the burden shifts to Complainant to show that the articulated reason was a pretext for unlawful discrimination. *Broome v. Biondi*, 17 F.Supp.2d 211, 217 (S.D.N.Y. 1997).

Complainant has members who are families with children. Through its tester, Nestico, Complainant posed as an interested applicant who was a single mother with two children. Complainant demonstrated that it had resources to rent the apartment at 300 Windermere. Respondent denied Nestico the opportunity to view the apartment. Respondent informed another

Complainant tester, Emmordino, that she did not want children in the upstairs apartment. An inference of unlawful discrimination can be drawn from the denial and Nestico's familial status. Therefore, Complainant has established a prima facie case of unlawful discrimination.

Respondent did not meet her burden to present a legitimate, non-discriminatory reason for their refusal to rent to Complainant. At the public hearing Respondent strenuously argued that she could not have discriminated against Complainant because she eventually rented the upstairs apartment to a couple. Respondent stated that a couple living together constitutes a family. A couple may certainly constitute a family. However, under the Human Rights Law § 292.26, the term "familial status" means, in relevant part, "a) any person who is pregnant or has a child or is in the process of securing legal custody of any individual who has not attained the age of eighteen years, or (b) one or more individuals (who have not attained the age of eighteen years) being domiciled with: (1) a parent or another person having legal custody of such individual or individuals..."

Respondent also argued that it could not have discriminated against Complainant because she had shown her upstairs apartment to families with children but none showed interest in the unit. Respondent further argues that she would not have indicated in her advertising that the unit was near the Amherst school district if she did not want to attract families with children. Nonetheless, Respondent's arguments do not contravene the proof established at the public hearing. Respondent did show the upstairs unit to Complainant because its tester had children. Indeed, Respondent ultimately rented the unit to a couple with no children.

It is also an unlawful discriminatory practice for the owner, managing agent, or other person having the right to rent or lease a housing accommodation "to make any record or inquiry in connection with the prospective . . . rental or lease of such a housing accommodation which

expresses, directly or indirectly, any limitation, specification, or discrimination as to . . . familial status. . . or any intent to make any such limitation, specification or discrimination.” Human Rights Law § 296.5 (a)(3). On March 13, 2014, Respondent modified the advertisement on the Craigslist website to include the phrase “looking for party of one or two people...” for its upstairs two-bedroom apartment. As stated, Respondent also told Emmordino , “We don’t take kids.” In both instances, Respondent expressed an unlawful limitation on the basis of familial status.

### Damages

Complainant is entitled to an award of damages for the resources it diverted as a result of Respondent’s practices. *Mixon v. Grinker*, 157 A.D.2d 423, 426, 556 N.Y.S.2d 855, 857-58 (1st Dept. 1990); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). Complainant established that its central mission is to eliminate housing discrimination through outreach, education, and dispute resolution. Complainant diverted its resources away from its mission when it spent staff salaries, and payment to the testers, to investigate and prepare the filing of this complaint against Respondent. Complainant established the value of these resources at \$3,396.50. Accordingly, Complainant is entitled to compensatory damages.

Complainant is entitled to an award of punitive damages. Respondent's act, of summarily denying Complainant’s tester, Nestico, the opportunity to view a rental unit because she had children was unacceptable behavior and a clear violation of the Human Rights Law. In these circumstances, a punitive award of \$8,000.00 will serve to effectuate the purposes of the Human Rights Law. *Gostomski v. Sherwood Terrace Apartments*, DHR Case Nos. 10107538 and 10107540 (November 15, 2007), *aff’d*, *Sherwood Terrace Apartments v. New York State Div. of Human Rights*, 61 A.D.3d 1333, 877 N.Y.S.2d 595 (4th Dept. 2009); *Housing Opportunities*

*Made Equal, Inc. and Gilliam v. Johnston*, DHR Case Nos. 10132105 and 10132112 (February 3, 2011), *aff'd*, *Johnson v. Kirkland*, 100 A.D.3d 1354, 953 N.Y.S.2d 757 (4th Dept. 2012), *lv denied*, 107 A.D.3d 1502, 1503, 967 N.Y.S.2d 862 (4th Dept. 2013).

#### Civil Fine and Penalty

Human Rights Law § 297.4(c)(vi) authorizes the Division to assess civil fines and penalties, “in an amount not to exceed fifty thousand dollars, to be paid to the state by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the state by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious.” Any such civil penalty “shall be separately stated, and shall be in addition to and not reduce or offset any other damages or payment imposed upon a respondent pursuant to this article.” Human Rights Law § 297.4(e). In determining the amount of a civil penalty, the Division should consider the goal of deterrence, the nature and circumstances of the violation, the degree of the respondent’s culpability, any relevant history of the respondent’s actions, the respondent’s financial resources, and other matters as justice may require. *Id.*

A civil fine is appropriate in this matter. Respondent openly and deliberately disregarded its obligation under the Human Rights Law to rent to people regardless of familial status. The record contains no evidence about Respondent’s financial resources. However, the record established that Respondent is a small landlord and only owns the rental property that is the subject of this complaint.

Considering these factors, a civil fine in the amount of \$3,000.00 may act as an inducement to comply with the Human Rights Law in the future, may deter Respondent and others from future discriminatory action, and will present an example to the public that the

Division vigorously enforces the Human Rights Law. *Sherwood Terrace Apartments* at 1334, 877 N.Y.S.2d at 597.

### **ORDER**

On the basis of the foregoing Findings of Fact, Opinion and Decision, and pursuant to the provisions of the Human Rights Law and the Division's Rules of Practice, it is hereby

ORDERED that Respondent, and her agents, representatives, employees, successors, and assigns, shall cease and desist from discriminatory practices in housing; and it is further

ORDERED that Respondent shall take the following action to effectuate the purposes of the Human Rights Law and the findings and conclusions of this Order:

1. Within 60 days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of \$3,396.50, as compensatory damages, for Respondent's unlawful actions. Interest shall accrue on the award at the rate of nine percent per year from the date of the Commissioner's Order until payment is made.

2. This payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant, Housing Opportunities Made Equal, and delivered by certified mail, return receipt requested, to 1542 Main St, Buffalo, NY 14209. Respondent shall furnish written proof to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of her compliance with the directives contained within this order.

3. Within 60 days of the date of the Commissioner's Order, Respondent shall pay to Complainant the sum of \$8,000.00, as punitive damages for Respondent's unlawful actions.

Interest shall accrue on the award at the rate of nine percent per year from the date of the Commissioner's Order until payment is made.

4. This payment shall be made by Respondent in the form of a certified check made payable to the order of Complainant, Housing Opportunities Made Equal, and delivered by certified mail, return receipt requested, to 1542 Main St, Buffalo, NY 14209. Respondent shall furnish written proof to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, of her compliance with the directives contained within this order.

5. Within 60 days of the date of the Commissioner's Order, Respondent shall pay a civil fine and penalty to the State of New York in the amount of \$3,000.00. This payment shall be made in the form of a certified check made payable to the order of the State of New York and delivered by certified mail, return receipt requested, to Caroline Downey, Esq., General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York, 10458. Interest on this award shall accrue at a rate of nine percent per year from the date of the Commissioner's Order until payment is made;

6. Within sixty days of the Final Order, Respondent shall attend training in the prevention of unlawful discrimination in accordance with the Human Rights Law. A copy of attendance at a training, on the Human Rights Law, shall be provided to Caroline Downey, Esq., General Counsel of the New York State Division of Human Rights, at One Fordham Plaza, 4th Floor, Bronx, New York 10458.

7. Respondent shall cooperate with the representatives of the Division during any investigation into compliance with the directives contained within this Order.

DATED: January 13, 2016  
Buffalo, New York

A handwritten signature in cursive script that reads "Martin Erazo, Jr.".

Martin Erazo, Jr.  
Administrative Law Judge