

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION
OF HUMAN RIGHTS
on the Complaint of

HOUSING OPPORTUNITIES MADE EQUAL,
INC.,

Complainant,

v.

GLORIA D. MOSOVICH,

Respondent.

NOTICE AND
FINAL ORDER

Case No. 10118849

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 November 19, 2008, by Thomas S. Protano, 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 GALEN D. KIRKLAND, COMMISSIONER, AS THE FINAL ORDER OF THE NEW YORK STATE DIVISION OF HUMAN RIGHTS (“ORDER”) WITH THE FOLLOWING AMENDMENTS:

- The appropriate remedy is an award of \$3,240 to Complainant to commensate for the diversion of organization resources, not for attorney’s fees. *See Mixon v. Grinker*, 157 A.D.2d 423, 556 N.Y.S.2d 855 (1st Dept. 1990); *see also Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982); *Sauders v. General Services*

Corp., 659 F.Supp. 1042 (E.D.Va. 1987).

- Due to typographical error, the Recommended Order directs Respondent to cease and desist from discrimination on the basis of sexual orientation.

Respondent discriminated based on Complainant's race. Therefore, "race" is hereby substituted for "sexual orientation." Respondent shall cease and desist from discrimination on the basis of race in the rental of housing accommodations.

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 05 2009
Bronx, New York

A handwritten signature in black ink, reading "Galen D. Kirkland". The signature is written in a cursive style with a large, stylized initial "G".

GALEN D. KIRKLAND
COMMISSIONER

**NEW YORK STATE
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**HOUSING OPPORTUNITIES MADE
EQUAL, INC.,**

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v.

GLORIA D. MOSOVICH,

Respondent.

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

Case No. 10118849

SUMMARY

Complainant, an advocacy organization, filed a complaint against Respondent, asserting that she denied housing opportunities to African Americans in the Complainant's area. Complainant has proven its claim and, as a result, Respondent is liable to Complainant for damages. In addition, Respondent is ordered to pay civil fines to the State of New York as penalty for her actions.

PROCEEDINGS IN THE CASE

On July 5, 2007, 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 Thomas S. Protano, an Administrative Law Judge (“ALJ”) of the Division. A Public hearing was held on August 25, 2008.

Complainant and Respondent appeared at the hearing. The Division was represented by Richard J. Van Coevering. Respondent appeared *pro se*.

Permission to file post-hearing briefs was granted. The Division attorney filed proposed findings of fact and conclusions of law.

FINDINGS OF FACT

1. Complainant, also known by its acronym, HOME, is an organization established to promote fair housing in the Buffalo, New York, area. Complainant assists victims of housing discrimination, advocates for more comprehensive fair housing laws, promotes greater awareness and compliance with existing housing laws, and investigates housing complaints. (Tr. 19-20)
2. Respondent is the owner of 201 Norwood Avenue, Buffalo, New York, 14222 (“the building”). The building is a multi-family dwelling. Respondent rents units in the building. (ALJ Exhibit 3; Complainant’s Exhibit 3; Tr. 43)
3. On December 4, 2006, Respondent placed an advertisement in *The Buffalo News* offering a one bedroom apartment (“the apartment”) in the building. (Complainant’s Exhibit 1)
4. Thereafter, Lisa Thagard called Respondent and made an appointment to view the apartment. When Thagard, who is African American, appeared, Respondent told her that the apartment was no longer available. (Complainant’s Exhibit 5; Tr. 20, 43)
5. Thagard complained about the incident to the Complainant, which, thereupon, conducted an investigation into the matter. (Complainant’s Exhibit 5; Tr. 20-21)

6. DeAnna Eason, one of Complainant's employees, took the complaint for Complainant. Eason noted in her report that Thagard "does not have a distinctive African American voice over the telephone." (Complainant's Exhibit 5)

7. As part of the investigatory process, Complainant had Denise Dawson, who is African American and can be considered to have a distinctive African American voice, pose as a prospective tenant. (Tr. 36)

8. Dawson called Respondent to inquire about the apartment on December 7, 2006, and left a voice message. Respondent did not return the call. (Tr. 38)

9. On December 8, 2006, Dawson called Respondent again. Her call was not returned. (Tr. 38-39)

10. The following day, Dawson called again. This time, Respondent answered the phone. Respondent told Dawson that she would call Dawson back to arrange for a viewing. Respondent did not call back. (Tr. 39)

11. Two days later, Dawson again called Respondent, who told Dawson that she did not know when the apartment would be available for viewing because she was having work done on the apartment. Respondent told Dawson she would get back to her, but Respondent never called back. (Tr. 39-40)

12. On December 12, 2006, a day after Dawson last attempted to view the apartment, Complainant had another prospective tenant, Sandra Emmordino, call Respondent about the apartment. Emmordino was given an appointment to see the apartment. Emmordino is Caucasian. (ALJ Exhibit 3; Tr. 33-34)

13. Respondent showed the apartment to Emmordino on December 12, 2006, and offered Emmordino the opportunity to rent it if her references checked out and she paid the appropriate fees. (Tr. 34)

14. Emmordino did not follow up on the offer and Complainant filed the instant complaint with the Division alleging that Respondent refused to consider Thagard or Dawson because of their race. (Tr. 34)

15. Respondent stated that she "was undecided about what I was going to do in the apartment" because she felt it needed work. Respondent stated that she has "rented to almost every nationality." (Tr. 46-47)

16. Respondent asserts that she does rent to African American tenants and submitted two unsworn letters purportedly from two of her tenants in the building. The letters claim that an African American tenant currently rents an apartment in the building. (Respondent's Exhibit 1)

17. Complainant employed several staff members in the investigation and prosecution of this case. One staff member, an attorney, expended 12.5 hours, billed at \$125.00 per hour, working on the case. (Tr. 24-25)

18. Two paralegals worked a total of 19.5 hours on the case, billed at \$75.00 per hour. (Tr. 25)

19. The two investigators involved were paid stipends totaling \$215.00. (Tr. 25)

OPINION AND DECISION

Human Rights Law makes it unlawful to refuse to rent a housing accommodation to prospective tenant because of that person's race. Human Rights Law § 296.5.

An advocacy group or an organization such as Complainant, whose members are injured

by an alleged discriminatory act, has standing to file a complaint of discrimination under the Human Rights Law. *National Organization for Women v. State Division of Human Rights*, 34 N.Y.2d 416, 358, N.Y.S.2d 124, 314 N.E.2d 867 (1974).

In order to prevail, Complainant must first make out a prima facie case of housing discrimination. To do so, it must allege that members of a protected class, who were qualified to rent the premises, were denied an opportunity to rent “under circumstances that would give rise to an inference of unlawful discrimination.” *Dunleavy v. Hilton Hall Apartments Co., LLC, et al.*, 14 A.D.3d 479, 480, 789 N.Y.S.2d 164, 165 (2nd Dept., 2005). Respondent then has the burden of rebutting any inference of housing discrimination by articulating a legitimate, non-discriminatory reason for her actions. If she does that, the burden shifts to Complainant to show that the articulated reason was a pretext for housing discrimination. *Broome v. Biondi*, 17 F.Supp.2d 211, 217 (S.D.N.Y. 1997), *citing*, *Soules v. United States Department of Housing & Urban Development*, 967 F.2d 817 (2nd Cir. 1992).

Thagard and Dawson, both of whom are African American, were refused an opportunity to look at the apartment by Respondent. Emmordino, the Caucasian, was offered the apartment after Thagard was told it was unavailable and Dawson was told Respondent would get back to her, but Respondent never did get back to Dawson. Complainant has established a prima facie case of discrimination.

Respondent answers with vague claims that the apartment needed work and she was unsure what she wanted to do with her apartment. These claims do not ring true and cannot be credited. Respondent argues that on December 11, 2006, she was unsure about the apartment. Yet, the following day, on December 12, 2006, she offered Emmordino the apartment. All of this occurred about a week after Respondent advertised the apartment, set up an appointment

with Thagard and, when Thagard appeared to view the apartment, told Thagard the apartment was no longer available.

Although Respondent claims she rents to an African American tenant, the unsworn letters from purported tenants cannot overcome the weight of the evidence supporting Complainant's case, especially since Respondent's conduct does not support her story. To wit: on December 4, she advertised an available apartment; on December 6, she scheduled an appointment with Thagard, only to tell Thagard that the apartment was not available; on December 7 and 8, she ignored calls from Dawson; on December 9 and 11, she told Dawson she would get back to her but did not mention that the apartment was unavailable, then never called Dawson back; finally, on December 12, she offered the apartment to the first Caucasian applicant identified at hearing. Because of this mass of contradictions, Respondent's story cannot be credited. In the absence of a credible explanation from Respondent, the only plausible conclusion is that Thagard and Dawson were turned away because of their race, in violation of the Human Rights Law.

As a result of Respondent's unlawful conduct, Complainant was forced to expend resources investigating and preparing the case. The total cost to Respondent was \$3,240.00. The Human Rights Law expressly authorizes the Division to award attorney's fees to the prevailing party in housing discrimination cases. See, Human Rights Law §297.10, which states in relevant part that:

With respect to cases of housing discrimination only, in an action or proceeding at law under this section or section two hundred ninety-eight of this article, the commissioner or the court may in its discretion award reasonable attorney's fees to any prevailing party or substantially prevailing party. . .

In this complaint, Complainant is the prevailing party. There has been a finding of liability against Respondent. See, *Texas State Teachers Ass'n v. Garland Indep. School District*,

489 U.S. 782, 792 (1989). Nevertheless, a complainant is not automatically entitled to the attorney fees requested. It is, rather, subject to the discretion of the trier of fact. Complainant in the instant case is entitled to an attorney fee award based on the reasonable hours expended.

Complainant's award of attorney's fees is to be calculated by utilizing the "lodestar" method. See, *McGrath v. Toys "R" Us, Inc.*, 3 N.Y.3d 421, 788 N.Y.S.2d 281 (2004). This method "estimates the amount of the fee award by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." *Blanchard*, 489 U.S. at 94; *Shannon v. Fireman's Fund Insurance Co.*, 156 F. Supp.2d 279, 299 (S.D.N.Y. 2001).

A reasonable attorney's fee is "one calculated on the basis of rates and practices prevailing in the market, i.e., 'in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation,' and one that grants the successful civil rights plaintiff a 'fully compensatory fee,' comparable to what 'is traditional with attorneys compensated by a fee-paying client.'" *Missouri v. Jenkins*, 491 U.S. 274, 286 (1989). In accordance with the lodestar method of calculation, Complainant is entitled to \$3,240.00 as compensation for its expenses.

In addition, the Human Rights Law empowers the Division to assess civil fines on a Respondent who violates the law with respect to housing claims. Respondent refused to consider two African Americans for tenancy in her building. She fabricated stories about the availability and habitability of the apartment in order to prevent Thagard and Dawson from even viewing the premises, before offering the apartment to Emmordino. Respondent's actions cannot be tolerated by the Division. As such, Respondent is hereby assessed a civil fine and penalty in the amount of \$5,000.00, as a deterrent for Respondent's unlawful discriminatory actions which have been found to be willful, wanton and malicious. Human Rights Law, § 297.4 (c) (vi); see also, *Matter*

of 119-121 East 97th Street Corp. et al. v. New York City Commission on Human Rights, et al.,
220 A.D.2d 79, 642 N.Y.S.2d 638 (1st Dept. 1996).

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 cease and desist from discrimination on the basis of sexual orientation in the rental and provision of services in housing accommodations; and it is further

ORDERED, that Respondent, its agents, representatives, employees, successors and assigns shall take the following affirmative action to effectuate the purposes of the Human Rights Law:

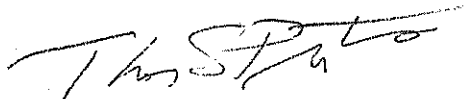
1. Within sixty (60) days from the signing of the Final Order by the Commissioner, Respondent shall pay to Complainant the sum of \$3,240.00, without any deductions or withholdings whatsoever, as compensatory damages for the work its staff expended as a result of Respondent's unlawful discrimination.

Respondent shall also pay interest on this amount from the date of this Order until the date of payment;

2. The aforesaid payment shall be made by the Respondent in the form of a certified check made payable to the order of Housing Opportunities Made Equal, Inc., and delivered by certified mail, return receipt requested, to 700 Main Street, 3rd Floor, Buffalo, New York, 14202. Proof of payment shall be sent to the Division at the office of General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458;

3. Within sixty (60) days from the signing of the Final Order by the Commissioner, Respondent shall pay to the Division a civil fine and penalty in the amount of \$5,000.00, as a result of Respondent's actions, which were found to be willful, wanton, and malicious;
4. The aforesaid payment shall be made by the Respondent in the form of a certified check made payable to the order of the New York State Office of the State Comptroller, and delivered by certified mail, return receipt requested, to 110 State Street, Albany, New York 12244. A copy of the certified check shall be delivered by certified mail, return receipt requested, to Caroline Downey, General Counsel, New York State Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458;
5. Respondent shall make available to the representatives of the Division whatever documents and information as may be necessary for the Division to ascertain whether there has been compliance with the remedial provisions of this Order.

DATED: November 19, 2008
Bronx, New York



Thomas S. Protano
Administrative Law Judge