Commission on Human Rights and Opportunities ex rel. JoAnn Andrees	: Commission on Human Rights and Opportunities
	: CHRO No. 0650116
v.	: HUD No. 01-06-0331-8
Raymond & Sylvia Rinaldi	: December 10, 2008

FINAL DECISION

Preliminary statement

On May 19, 2006, JoAnn Andrees (the complainant or plaintiff) filed an affidavit of illegal discrimination (affidavit or complaint) with the commission on human rights and opportunities (the commission). In her affidavit, she alleged that Raymond Rinaldi, Sylvia Costa[1] (the respondents or defendants) and Patricia Bray[2] had discriminated against her in violation of 42 U.S.C. §§ 1981, 1982, and 3601 et seq.[3] and also General Statutes §§ 46a-58 (a) and 46a-64c (a) (1) and (2). According to the complainant, the respondents refused to rent a condominium unit to her because of her race and color.

[1] For consistency with the pleadings, the caption of the final decision refers to Sylvia as "Sylvia Rinaldi". As she retained her maiden name of "Costa" following her marriage to Raymond Rinaldi; Tr. 3, 231; the decision itself will refer to her as "Sylvia Costa".

[2] The complaint against Bray was settled. See Commission on Human Rights & Opportunities ex rel. JoAnn Andrees v. Patricia Bray c/o Coldwell Banker Woodbridge, CHRO No. 0650115.

[3] Section 3601 et seq. is commonly known as Title VIII or the federal Fair Housing Act.

After preliminary investigation, the commission's investigator concluded that there was reasonable cause to believe that unfair practices had been committed as alleged in the affidavit and, on February 22, 2007, certified the affidavit to the commission's executive director and the attorney general. The undersigned was appointed the presiding human rights referee on February 27, 2007. The respondents filed their post-certification answer on March 6, 2007. They denied the allegations of discrimination and claimed to have been unaware of the complainant's race and color. The public hearing was held on October 20 and 22, 2008. Post-hearing briefs were due on December 4, 2008, at which time the record closed.

For the reasons set forth herein, the complaint is dismissed.

Findings of fact

Based upon a review of the pleadings, exhibits and transcripts and an assessment of the credibility of the witnesses, the following facts relevant to this decision are found ("FF")[4]:

1. On March 15, 1988, Raymond Rinaldi purchased a condominium unit known as unit 322 of Oronoque Forest. C/CHRO 1; Tr. 219. The unit has street addresses of 322 Berwick, West Haven and also 690 Forest Rd.,

[4] The commission and the complainant submitted joint exhibits identified as "C/CHRO" followed by the exhibit number. The respondents did not submit any exhibits. References to the transcript are designated as "Tr." followed by the page number.

#322, West Haven. C/CHRO 12, 17; Tr. 18. On October 11, 1996, Rinaldi transferred the property to himself and Sylvia Costa, his wife. C/CHRO 17; Tr. 220.

2. Rinaldi resided in the unit for approximately four years before he moved out and began leasing it. Tr. 231.

3. The respondents have an established policy and practice of personally meeting with prospective tenants before entering into a lease. Tr. 127, 236-37, 239-40, 249, 286.

4. With the exception of securing one tenant, Rinaldi utilized the services of Patricia Bray, a real estate agent, to list the unit and identify prospective tenants for all other tenancies. Tr. 234-38.

5. Rinaldi did not list the unit with Bray when he leased the unit to Paulette Kenney in August 2004 because Kenney was recommended to him by residents in the condominium complex. He did, however, meet with Kenney prior to executing the lease. C/CHRO-16; Tr. 238-39, 262-63.

6. On June 19, 2005, the respondents entered into an exclusive right to lease contract with Harriet Cooper Associates, subsequently acquired by Coldwell Banker. Harriet Cooper Associates/Coldwell Banker was to serve as the listing agency and Bray as the listing agent in securing offers from prospective lessees. The contract's termination date was subsequently

extended from December 19, 2005 to June 30, 2006. C/CHRO 9; Tr. 234-35, 259.

7. In 2005**,** the complainant, a black female, then an assistant superintendant of schools for the West Bloomfield, Michigan school district, applied to the West Haven, Connecticut board of education (the BOE) for the position of its superintendant of schools. C/CHRO 19, ¶ 1; Tr. 102-04, 111-13.

8. The complainant was hired for the position and the employment contract between her and the BOE was signed in January 2006. Tr. 104, 112. It was a two year contract commencing on July 1, 2006. C/CHRO 3, p. 5.

9. The complainant was to be a per diem employee of the BOE for twenty five days between January 1 and July 1, 2006 to facilitate her transition to superintendent and to assist the BOE in the preparation of its 2006-07 budget. C/CHRO 3, p.5; Tr. 113. During the transitional period, the complainant commuted between Connecticut and Michigan. Tr. 113-14.

10. The complainant's contract with the BOE required her to reside in West Haven. Tr. 114. In February 2006, the complainant contacted John Coppola, the owner/ broker and an agent of Century 21 Today real estate agency, to assist her in locating a rental in West Haven. She told him that she would be in the area in April and would like to inspect properties. Tr. 11, 114-15.

11. On Friday, April 14, 2006 (Good Friday), the complainant and Coppola entered into an exclusive buyer agency contract providing, inter alia, that Coppola would assist the complainant in locating a rental unit. C/CHRO 8; Tr. 14-15, 129.

12. Also on Friday, April 14, 2006, the complainant, her son and Coppola viewed two condominium units that had been listed on the multiple listing service as available for rent. Tr. 13-14, 118, 128-29. One of the units was the respondents' unit. Tr. 16, 119. They arrived at the respondents' unit at approximately noon to meet with Bray and inspect the premises. Tr. 20-23, 119, 121-24.

13. Bray walked them through the unit, giving them "your normal showing" of the premises. Tr. 22.

14. Bray told the complainant that the respondents may want to meet with her as they meet with every prospective tenant. C/CHRO 3, p. 6; Tr. 23, 51, 75, 126-27.

15. Following the inspection, the complainant told Coppola that she was interested in leasing the unit. Tr. 24, 125-26.

16. Thereafter, the complainant, her son and Coppola inspected the second condominium unit. The complainant told Coppola that she preferred the respondents' unit. Tr. 24-25, 128-29.

17. Also on April 14, 2006, the complainant provided Coppola with an authorization for him to request her credit report. C/CHRO 8; Tr. 28, 164.

18. On either April 14, 2006 or April 15, 2006, Coppola spoke to Bray and relayed the complainant's interest in the respondents' unit. Bray told Coppola that if the complainant was interested in the unit, Coppola should forward to Bray a copy of the complainant's resume. Tr. 23, 29.

19. On Saturday, April 15, 2006, Coppola contacted the complainant and asked her to provide him with a copy of her resume. She brought the resume to his office later that day. C/CHRO 8; Tr. 164-65.

20. On Saturday, April 15, 2006 at approximately 3:00 PM, Bray telephoned Rinaldi to tell him that someone was interested in the unit. Tr. 242-43. Rinaldi asked Bray if a meeting had been scheduled for him and his wife to meet with the prospective tenant. Bray said no meeting had been scheduled, the prospective tenant would be leaving the state the next morning and she would contact prospective tenant's realtor. Tr. 243.

21. On Easter Sunday, April 16, 2006, the complainant and her son returned to Michigan. C/CHRO 3, p. 7; Tr. 131.

22. On Monday, April 17, 2006, Kelly Turtzo, Coppola's assistant, faxed to Bray the complainant's credit report. C/CHRO 8; Tr. 30.

23. Also on April 17, 2006, Turtzo faxed an incomplete copy of the complainant's resume to Sherri Coleman, office manager for Coldwell

Banker, for Coleman to give to Bray. C/CHRO 8[5]; Tr. 30. Coppola spoke with Bray on April 17, 2006 and confirmed her receipt of the credit report and resume. Tr. 30, 56.

24. Coppola did not speak with Bray again after their conversation on April 17, 2006. Tr. 30-31, 55-56.[6]

25. On or about April 17, 2006, Coppola left for vacation in Jamaica. Tr. 32, 56. He instructed Turtzo to follow-up with Bray during his absence on the complainant's interest in respondents' unit. C/CHRO 3, p. 7; Tr. 32.

26. Coppola returned from vacation sometime between April 26-28, 2006. Tr. 65, 70-71.

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[5] The transmittal of the complainant's resume is one of the documents included in C/CHRO 8. According to the transmittal cover page, the entire transmittal consisted of five pages, the first page being the cover sheet. The second page is a sheet of letterhead from the BOE with a business card identifying the complainant as the superintendant of schools. The third, fourth and fifth pages are the resume of the complainant's employment history from 1972-2000. No employment history is given for the period from 2000 to 2006, the six years immediately preceding the complainant's inspection of the unit.

[6] Coppola's testimony is inconsistent as to whether he spoke with Bray after April 17, 2006. His testimony on transcript pages 30-31 and 55-56 indicate that he did not. His testimony on pages 71, 77-80 suggests that he did. He also conceded that he does not remember whether he spoke with Coleman or Bray; Tr. 79; or spoke interchangeably with Coleman and Bray; Tr. 82. As Coppola noted, it has been two and a half years since this incident occurred and he has since shown properties to several hundred other clients. Tr. 22, 49. Given Coppola's uncertainty as to whom he spoke with, his vacationing out of the country during the relevant time period and the lack of testimony from Bray, Turtzo and Coleman, I find more credible that Coppola did not speak with Bray after April 17, 2006.

27. Rinaldi telephoned Bray, subsequent to his April 15, 2006 telephone conversation with her, to ask if she had heard anything from Coppola. Bray said she had not. Tr. 244.

28. In a telephone conversation with the complainant sometime between April 17 and 19, 2006, Turtzo told the complainant that the "sticking point" for the respondents was their desire to meet with the complainant before leasing the unit. C/CHRO 3, p. 7.

29. The complainant and Coppola felt that the complainant's return to Connecticut to meet with the respondents was an unreasonable request. C/CHRO 19, ¶ 3; Tr. 39-40.

30. On April 20, 2006, in another telephone conversation with the complainant, Turtzo told the complainant that Turtzo was concerned that there was a racial issue behind the respondents' desire to meet with her before agreeing to lease the unit. C/CHRO 3, p. 7.

31. On April 25, 2006, Turtzo told Coleman that Turtzo and Coppola believed that the complainant was being discriminated against. C/CHRO 19, ¶ 5.

32. On April 26, 2006, Turtzo transmitted to Coleman a credit report for the complainant's husband and a Century 21 application to lease the respondents' unit signed by the complainant. C/CHRO 8.

33. On Friday, April 28, 2006, Coleman notified Coppola that the respondents' unit had been taken off the market. Tr. 37-38, 71-72. Coleman did not

provide an explanation for why the unit was being taken off the market. Tr. 39, 80. After being told that the unit was off the market, Coppola told Coleman that the complainant would be willing to return to Connecticut to meet with the respondents. Tr. 39-40.

34. The respondents were never provided with a date, time and place when the complainant would be available to meet with them. Tr. 252, 302.

35. Thereafter on April 28, 2006, Coppola notified the complainant that she would not be able to lease the unit as it had been withdrawn from the market. Coppola told the complainant that he believed she had been discriminated against on the basis of her race or gender. C/CHRO 19, ¶ 6; Tr. 39, 44-45, 138-39, 168.

36. Following the removal of the respondents' unit from the market, the complainant then located and rented a different condominium unit in West Haven. C/CHRO 18; Tr. 143-44. Coppola and his real estate agency were not involved in this transaction. Tr. 144-45.

37. In May 2008, the complainant applied for and was hired as the superintendent of the West Bloomfield, Michigan, school district and returned to Michigan in June 2008. Tr. 148, 173.

38. Between January 2005 and the public hearing on October 22, 2008, the respondents did not lease their unit to any tenant and it remained vacant. Tr. 220, 286.

39. Neither Coppola nor Turtzo nor anyone else from Century 21 Today ever had contact with the respondents. Tr. 48.

40. The complainant had no conversations with Bray after the inspection of the unit on April 14, 2006. Tr. 162-63, 174.

41. The complainant had no conversations with Coleman or anyone else in Bray's office. Tr. 162-63, 174.

42. The complainant and the respondents never met nor had any conversations with each other. Tr. 162-63, 174.

43. Bray never told Rinaldi that the complainant was black. Tr. 243, 284.

44. The respondents did not know the complainant was black until they received a copy of the affidavit she had filed with the commission in which she identified herself as black. Tr. 284.

Analysis

I

Section 46a-64c

A

The complainant alleged that the respondents discriminated against her by refusing to rent her their condominium unit because of her color and race in violation of § 46a-64c (a) (1) and (2). Section 46a-64c provides in part that: "(a) It shall be a discriminatory practice in violation of this section: (1) To refuse to sell or rent after the

making a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income or familial status. (2) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, creed, color, national origin, ancestry, sex, marital status, age, lawful source of income or familial status."[7]

B

The complainant may prove disparate treatment by evidence supporting either a mixed motive analysis or a pretext analysis. *Commission on Human Rights & Opportunities v. Sullivan*, 285 Conn. 208, 225-26 (2008). A mixed or dual motive case arises when there is persuasive direct or circumstantial evidence that the respondents' decision was motivated by both legitimate and discriminatory reasons. The complainant must offer either "direct evidence that decisionmakers placed substantial negative reliance on an illegitimate criterion in reaching their decision" or sufficient circumstantial evidence to establish "by a preponderance of the evidence, that [membership in a protected group] was a motivating factor for the decision." (Internal quotation marks

[7] Section 46a-64c was amended by P.A. 07-217. The public act did not amend subsection (a).

omitted.) Id., 227. “Once the plaintiff has this showing, the burden then shifts to the defendant to show, by a preponderance of the evidence, that it would have made the same decision even in the absence of the impermissible factor.” Id., 229. That is, respondents must show that they were actually “motivated, at the time that the decision was made, by a legitimate reason and that [their] legitimate reason, standing alone, would have induced [them] to make the same decision.” (Internal quotation marks omitted.) Id.

Alternatively, when there is evidence that the respondents’ decision was made either only for discriminatory reasons or only for legitimate reasons, known as a pretext or single motive case, the complainant must first establish the four elements of a prima facie case: (1) she is a member of a protected class; (2) she applied for and was qualified to rent the unit; (3) she suffered an adverse action by the respondents; and “(4) that the adverse action occurred under circumstances giving rise to an inference of discrimination.” Id., 227; *Jacobs v. General Electric Co.*, 275 Conn. 395, 400 (2005). Once the complainant makes this showing, the burden of production then shifts to the respondents to articulate a legitimate, nondiscriminatory reason for the adverse action taken. The respondents’ “burden is one of production, not persuasion; it can involve no credibility assessment.” (Internal quotation marks omitted.) *Jacobs v. General Electric Co.*, supra, 275 Conn. 400.

Once the respondents have produced a legitimate, nondiscriminatory reason, the complainant, whether “by persuading [the tribunal] that a discriminatory reason more

likely motivated" the respondents or by showing that the respondents' "proffered explanation is not worthy of credence," must demonstrate that the proffered reason was not the true reason for the respondents' decision. Id., 401. "This burden now merges with the ultimate burden of persuading the court that [the complainant] has been the victim of intentional discrimination." (Internal quotation marks omitted.) Id.

II

Section 46a-58 (a)

The complainant further alleged that the respondents also violated § 46a-58 (a) when they refused to rent to her because of her race and color. In 2006, when the facts at issue in this case occurred, § 46a-58 (a) provided: "It shall be a discriminatory practice in violation of this section for any person to subject, or cause to be subjected, any other person to the deprivation of any rights, privileges or immunities, secured or protected by the Constitution or laws of this state or of the United States, on account of religion, national origin, alienage, color, race, sex, blindness or physical disability."[8] The complainant alleged that the specific laws of the United States that the respondents violated are 42 U.S.C. §§ 1981, 1982 and 3604.

[8] Since the occurrence of the events alleged in this affidavit, § 46a-58 has been amended by P.A. 07-62, section 167 of P.A. 07-217 and P.A. 08-49. These amendments do not impact this case.

A

Section 1981 provides in relevant part that: “(a) All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.” According to § 1982: “All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.” Section 3604 provides in relevant part that “it shall be unlawful - - (a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, sex, familial status, or national origin.“

B

Housing discrimination claims brought under §§ 1981, 1982 and 3604 are analyzed under a three-part burden shifting analysis. In this analysis, the complainant begins by establishing a prima facie case. *Mitchell v Shane*, 350 F.3d 39, 47 (2d Cir. 2003); *Tavares v. Nike, Inc.*, United States District Court, E. D. New York, Docket No.

05-CV-4107 (FB)(AKT) (November 11, 2008) (2008 WL 4865972, 1-2); *The Open Housing Center, Inc. v. Kessler Realty, Inc.*, United States District Court, E. D. New York, Docket No. 96-CV-6234 (ILG) (December 21, 2001) (2001 WL 1776163, 6 and 9). The prima facie elements vary slightly among §§ 1981, 1982 and 3604 cases. In a refusal to contract claim under § 1981, a complainant "can establish a prima facie case by establishing that (1) she was a member of a protected class; (2) she sought to enter into a contractual relationship with [the respondents]; (3) she met [the respondents'] ordinary requirements to pay for and to receive goods or services ordinarily provided by [the respondents]; and (4) she was denied the opportunity to contract for goods or services otherwise afforded to white customers." (Internal quotation marks omitted.) *Tavares v. Nike, Inc.*, supra, 2008 WL 4865972, 2.

To establish a prima facie housing discrimination claim under § 1982, the complainant "must show that: (1) [she] is a member of the class protected by the statute, (2) [she] applied for and was qualified to rent the housing, (3) [she] was denied the opportunity to rent the housing, and (4) the housing opportunity remained available thereafter." *Broome v Biondi*, 17 F.Sup.2d 211, 216 (S.D.N.Y. 1997).

The prima facie elements of both §§ 1981 and 1982 further "require a showing of discriminatory intent. . . . The totality of the relevant facts must be examined to determine whether a discriminatory purpose may properly be inferred. . . . The inquiry is a practical one designed to ascertain whether the action could not reasonably be explained without reference to racial concerns." (Citations omitted; internal quotation

marks omitted.) *The Open Housing Center, Inc. v. Kessler Realty, Inc.*, supra, 2001 WL 1776163, 10.

To establish a prima facie case of housing discrimination under § 3604, the complainant must show that: (1) she is a member of a protected class; (2) she sought and was qualified to rent the unit; (3) she was rejected; "and (4) that the housing opportunity remained available to other renters or purchasers." *Mitchell v Shane*, supra, 350 F.3d 47.

If the complainant succeeds in proving a prima face case, the respondents then have a burden to articulate a legitimate, non-discriminatory rationale for their decision not to rent to her. Should the respondents carry this burden, the complainant must then have the opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the respondents were not their true reasons, but were a pretext for intentional discrimination. *Mitchell v Shane*, supra, 350 F.3d 47; *Tavares v. Nike, Inc.*, supra, 2008 WL 4865972, 1-2; *The Open Housing Center, Inc. v. Kessler Realty, Inc.*, supra, 2001 WL 1776163, 6 and 9. Under § 3604, the complainant "must demonstrate that [her] race was a motivating factor in the landlord's decision not to rent [her] the unit. . . . The elements of required proof as articulated by the Second Circuit for claims under sections 1981 and 1982 similarly require proof of a causal link between racial animus and the adverse decision." (Citation omitted.). *Woods v. Real Renters Ltd.*, United States District Court, S.D. New York, Docket No. 01 CIV 0269 (MHD) (March 1, 2007)

(2007 WL 656907, 8). The complainant bears the burden of persuasion "to establish that [the respondents] acted with discriminatory intent." Id., 11.

III

A

The complainant's claims under §§ 46a-58, 46a-64c, and 42 USC §§ 1981, 1982 and 3604 fail because there is no credible evidence that the respondents knew the complainant was black. FF 39-44. Seven people were involved in the proposed tenancy: (1) the complainant; (2) Coppola, her real estate agent at Century 21 Today; (3) Turtzo, Coppola's secretary; (4) respondent Rinaldi; (5) respondent Costa; (6) Bray, the respondents' real estate agent at Coldwell Banker; and (7) Coleman, Bray's office manager. Of these seven, four of them clearly knew that the complainant was black: the complainant, Coppola, Turtzo and Bray. Coleman probably knew that the complainant was black from her telephone conversation with Turtzo; FF 31; and possibly from working with Bray. The complainant, Coppola and Turtzo, though, never met nor spoke with the respondents. FF 39, 42. Like Turtzo, Bray and Coleman also were on the complainant's witness list and also were not called as witnesses; and there is no credible direct or circumstantial evidence that Bray or Coleman told the respondents that the complainant was black. FF 43, 44. Absent competent evidence that the respondents were aware of the complainant's race and color, her discrimination claim

cannot succeed. *Woods v. Real Renters Ltd.*, supra, 2007 WL 656907, 10; *Tavares v. Nike, Inc.*, supra, 2008 WL 4865972, 3.

B

In the absence of credible evidence that the respondents knew the complainant was black, the complainant cannot establish a dual motive case that would shift the burden of persuasion to the respondents. With respect to a single motive/pretext analysis, in the absence of credible evidence that the respondents knew the complainant was black, the complainant also cannot establish the inference of discriminatory intent required for a prima facie case under §§ 46a-64c, 1981 and 1982. In addition, a prima facie element in §§ 1982 and 3604 single motive/pretext cases is that the housing opportunity remain open after the rejection. In this case, though, the unit was removed from the market and the housing opportunity no longer remained available to the complainant or to other prospective tenants. FF 38.

Even if one were to presume that the complainant established the de minimis prima facie elements of a single motive/pretext analysis, the respondents have articulated legitimate, non-discriminatory reasons for not renting to her: (1) they had an established policy of meeting personally with prospective tenants to review and sign the lease but they were never provided with a date, time and place to meet with the complainant; FF 3, 5, 34; (2) despite having the complainant's telephone number, they

did not call her because Bray and Coleman had told them not to call; the complainant or her agent would contact them if she were interested; Tr. 268-69, 287, 303; (3) the decision by Coldwell Banker to no longer market their unit; Tr. 249-51; and (4) their subsequent decision to take the unit off the market in anticipation that they would move into the unit at some time because of Costa's health; Tr. 286.

Once the respondents have articulated their non-discriminatory reasons, the complainant must demonstrate by persuasive evidence that there is a causal link between the racial animus and the adverse action and that she was the victim of intentional discrimination by the respondents because of her race and color. The critical people to the complainant's case, Bray and Coleman, were not called as witnesses. Bray had met the complainant and would have observed that she was black. Coleman could have testified whether Bray, Coppola or Turtzo told her that the complainant was black. As Bray and Coleman were the only two people involved in the lease negotiation who had contact with the respondents, they are the only people who could testify whether they made the respondents aware that the complainant was black. Again, in the absence of credible evidence that the respondents knew her race and color, the complainant cannot meet her ultimate burden of persuasion that she was the victim of intentional discrimination because of her race and color. *Woods v. Real Renters Ltd*., supra, 2007 WL 656907, 10; *Tavares v. Nike, Inc.*, supra, 2008 WL 4865972, 3.

Further, Bray could have testified whether the respondents had a consistent policy of meeting with prospective tenants. Bray and Coleman could have testified

whether they had told the respondents not to contact the complainant. They could have clarified why a credit report was required for the complainant's husband. They could have provided an explanation of the circumstances of the withdrawal of the unit from the market. Yet they did not testify.

The complainant "has done little more than cite to [her alleged] mistreatment and ask the court to conclude that it must have been related to [her] race. This is not sufficient." (Internal quotation marks omitted.) *Grillo v. New York City Transit Authority*, 291 F. 3d 231, 235 (2d Cir. 2002).

C

1

In their joint brief, the complainant and the commission raised eight arguments in support of their claim that the respondents' explanations for not renting to the complainant are pretextual. The most important aspect of this case, whether the respondents knew the complainant was black, is addressed by the complainant and the commission in a single, three-quarter page paragraph. According to them, the respondents "could have read the [news]paper articles about Dr. Andrees or heard talk of her among the community, despite Raymond Rinaldi's claim to the contrary. Patricia Bray knew Dr. Andrees was Black and given her standoffishness at the showing of the unit, it is logical that she told that fact to the Rinaldis. Further, it is reasonable to believe the Rinaldis knew Dr. Andrees was Black when Bray's office dropped the rental listing." Joint brief, p. 44. The problem with this argument is that it is based on utter speculation

as to what the respondents “could have known,” could have heard or might have been told by Bray. Rinaldi testified without contradiction by any witness that he did not read the newspaper articles regarding the complainant. Tr. 221, 289-90; FF 44. He further testified without contradiction by any witness that Bray did not tell him or Costa that the complainant was black. FF 43. No witness testified that he or she told either of the respondents that the complainant was black. Had the complainant or the commission called Bray and Coleman to testify, they could have testified as to whether they told the respondents that the complainant was black and as to the circumstances of the unit being removed from the rental market. They did not call Bray or Coleman and the record is left with Rinaldi’s uncontradicted testimony.

The commission and the complainant also attempted to challenge the credibility of the respondents. They argued that Rinaldi’s testimony was not credible and Rinaldi’s hearsay testimony as to Costa is unreliable. At the public hearing, Rinaldi satisfied the respondents’ evidentiary burden by proffering facially legitimate, non-discriminatory reasons for why the unit was not rented to the complainant. In asserting that “the Respondents have provided no witnesses at the public hearing to corroborate Raymond Rinaldi’s story;” Joint brief, p. 36; the commission and the complainant impermissibly sought to shift the burden of persuasion to the respondents. Much of their argument consisted of doubting Rinaldi’s testimony of the interaction between himself and Bray and suggesting what the interaction between Rinaldi and Bray might have been. The person to credibly dispute Rinaldi’s testimony is Bray, who was not called as a witness.

The commission and the complainant also questioned the sequence of events as in this case. They claim that Rinaldi's testimony that Bray did not call him until Saturday afternoon does not make sense. There is, however, no contradicting testimony by Bray as to when she called. They further claim that his testimony that the unit remains unoccupied "is also illogical." Joint brief, p. 36. Illogical or not, there is no contradicting testimony that the unit has not been leased, and the testimony is consistent with his explanation that the unit is vacant because he and Costa may move in because of her health.

What is clear about the sequence of events is that the complainant inspected the unit on the Friday of a holiday weekend and was told that the respondents would likely want to meet with her as they had a policy of meeting with all prospective tenants. FF 14. She then left the state on Sunday; FF 21; without a meeting having been scheduled and prior to her agent having forwarded to the respondents' agent her credit report and incomplete resume, which would have allowed the respondents to determine whether she met objective qualifications for renting the unit.

The commission and the complainant raise several objections to the respondents' rental policies: they subjected the complainant to a burdensome application process, their subjective reason for not renting to the complainant (no personal meeting) was not genuine, and their rental practices fell outside of the normal course of the real estate business. The commission and the complainant, though, failed to offer evidence that the respondents treated the complainant different from

prospective white tenants in their application and rental practice. While the commission and the complainant may discount the need for a personal meeting and while the respondents' practices may differ from those of professional landlords, the issue here is whether the respondents applied their requirements consistently regardless of the race and color of applicants. Paulette Kenney was the only other tenant for whom evidence was offered, and Kenney was also subjected to the requirement of a personal meeting. While the potential exists for a personal meeting to be used to discriminate, in this case there was no such meeting and there is no evidence that the respondents knew of the complainant's race and color.

The commission and the complainant noted Rinaldi's testimony that the respondents had never rented the unit to a black person. There was, however, no testimony as to the total number of tenants who had rented the unit. More importantly, there was no testimony as to whether a black person had ever applied to rent the unit. Presumably, Bray, who had served as the listing agent, could have supplied this information, but she was not called as a witness. Absent testimony as to the number of black applicants and the total number of tenants, the statistic that the respondents had never rented to a black person has no probative value in this case.

In addition to arguing that the respondents are liable for their own discriminatory acts, the complainant and the commission argued in their joint brief that the respondents are also liable for the discriminatory acts of their real estate agent. Property owners not only may be directly liable for their own acts of discrimination but also may be vicariously liable for the discriminatory acts of their agents. *Cleveland v Caplaw Enterprises*, 448 F.3d 518, 523 (2d Cir. 2006). The commission and the complainant contend that an inference that Bray discriminated against the complainant can be drawn by Bray's conduct during and after the inspection. Joint brief, pp. 45-46. In this case, Coppola testified that, notwithstanding Bray's demeanor during the inspection, he and the complainant received "your normal showing" of the unit. FF 13. There is also no testimony that Bray's demeanor with the complainant was any different from her demeanor with prospective white tenants. Further, Coppola was the only testifying witness who may have had contact with the respondents' agents after April 17, 2006, and I find his testimony unclear as to whom he spoke with, what was said and when the conversations occurred. There is insufficient credible, persuasive evidence to find a discriminatory animus by Bray against the complainant because of her race and color such as to impose vicarious liability on the respondents.

Conclusions of law

The commission and the complainant failed to provide credible persuasive evidence that during the negotiations for the rental of the unit the respondents knew the complainant was black. Absent such evidence, the commission and the complainant cannot establish their prima facie case and/or cannot establish by a preponderance of the evidence that the respondents intentionally discriminated against the complainant because of her race and color.

Order

The complaint is dismissed.

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Hon. Jon P. FitzGerald
Presiding Human Rights Referee

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