STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS

Commission on Human Rights and Opportunities ex rel. Angela Pinto, Complainant	:CHRO No. 0550113
v.	
Edith Englehard, Respondent	:May 3, 2007

FINAL DECISION

I.

PROCEDURAL BACKGROUND

On March 3, 2005, the complainant, Angela Pinto, filed a complaint with the Commission on Human Rights and Opportunities (commission) alleging that the respondent, Edith Englehard, refused to rent an apartment to her because of her source of income (section 8) in violation of General Statutes § 46a-64c (a) et seq.

The commission investigated the charges in the complaint, found reasonable cause to believe a discriminatory practice had been committed, and attempted to eliminate the unfair practice by conference, conciliation and persuasion. After failing to so eliminate the practice, the commission certified the case to public hearing on November 17, 2005, in accordance with General Statutes §§ 46a-84 (a) and § 46a-54-79a of the Regulations of Connecticut State Agencies. I, J. Allen Kerr, Jr. was duly appointed as presiding human rights referee.

I conducted the duly noticed public hearing on October 10, 2006, October 20, 2006 and December 6, 2006. Thereafter, and subsequent to the conclusion of the public hearing, the parties filed post-hearing briefs and reply briefs. The reply briefs were due no later than February 9, 2007, on which date the record closed.

On March 16, 2007, the complainant filed a motion to strike portions of the respondent's reply brief, which motion was denied on April 13, 2007.

II.

FINDING OF FACTS

Transcript references are identified by "TR pp." followed by the page number(s). Exhibits are referenced by C, CHRO or R followed by the number.

1. During the summer and fall of 2004, the complainant sought a new apartment for herself and her disabled son. TR pp. 27, 112.
2. At all times relevant to this action, the complainant has had a section 8 rental assistance voucher from the Danbury Housing Authority. TR p. 28; C-1.
3. The complainant was unhappy with her apartment because it was too small for her and her son and lacked certain desirable amenities. TR pp. 26, 28.
4. In the fall of 2004, the complainant began working with realtor Lisa Burgess (Burgess) to find a new home. TR p. 112.

5. The complainant visited 77 Willow Springs in New Milford, Connecticut (owned by the respondent), and was impressed by the apartment, noting that it was bigger than her existing apartment. She informed Burgess that she wanted to rent the property. TR pp. 26, 28.
6. The property at 77 Willow Springs included a washing machine and dryer, amenities attractive to the complainant because she worked out of the home and because her disabled son generated significant laundry. The complainant spent between $25 and $40 per week at the laundromat. TR pp. 27-28.
7. The property at 77 Willow Springs has a community swimming pool and recreation facilities. TR pp. 28, 134.
8. The complainant was interested in the swimming pool and recreation opportunities for her son. TR p. 28.
9. The property at 77 Willow Springs had a fireplace, large rooms and a yard. It was larger and quieter than the complainant's apartment. TR p. 135.
10. The complainant completed an application for the property with the assistance of Burgess. TR pp. 29, 113-114.
11. On or about September 12, 2004, Burgess submitted the completed application, called an offer to lease, a credit report and the tenancy approval form from section 8 to respondent's realtor, Betty Pendergast (Pendergast). TR p. 114.
12. Burgess informed Pendergast that the complainant had a section 8 voucher and explained the section 8 process to her. TR p. 115.
13. On or about September 18, 2004, because the complainant had a questionable and limited credit report, Burgess submitted a purported explanation of the

complainant's credit history with attachments addressing her work history and history of payments on accounts not listed on her credit report. TR pp. 116-117.

14. The parties ultimately agreed on a rental amount of $1,180, a one month security deposit and a move-in date of November 1, 2004, culminating in the mutual execution of an offer to purchase. TR pp. 120-122; C-1, C-8, C-11.
15. Pendergast drafted a lease for 77 Willow Springs listing the complainant as the tenant and setting forth a monthly rent of $1,180 and a one month security deposit. TR p. 123; C-10.
16. The complainant applied for security deposit assistance from the Salvation Army. Her application was approved. TR p. 30; substitute C-8.
17. The respondent agreed to accept the security deposit from the Salvation Army. Substitute C-8.
18. The complainant was to move into 77 Willow Springs on November 1, 2004. TR p. 34; substitute C-2, C-11.
19. On October 26, 2004, Pendergast faxed documents to the respondent for her to review and sign, including form W-9. TR pp. 434-435; C-12.
20. Pendergast faxed a copy of the lease form she selected for 77 Willow Spring to the respondent. The respondent approved the use of lease. TR p. 434; C-12.
21. Burgess met with the respondent on or about the Thursday before November 1, 2004, to secure her signature on forms required by section 8, including the W-9, Request for Taxpayer Identification. TR p. 125.
22. The respondent asked many questions about the W-9 form. TR p. 127.

23. Burgess explained to the respondent that the W-9 was necessary so that HUD could issue a 1099 and report the section 8 payments as income to the IRS. TR p. 127.
24. The respondent was resistant to signing the W-9 and took about a half an hour to do so. Burgess repeatedly reminded the respondent that she had to complete the W-9. The respondent also executed a section 8 request for tenancy, landlord certificate, direct deposit authorization and Salvation Army security deposit agreement. TR p. 125-129; substitute C-2, C-3, C-7 and substitute C-8.
25. The complainant was scheduled to meet with the respondent and Pendergast on October 31, 2004 to complete the lease. TR pp. 33, 130-131.
26. The complainant signed the lease on October 31, 2004 and went to Pendergast's office with the intention of meeting with the respondent for her to sign the lease. TR p. 33.
27. The respondent did not appear to sign the lease. TR p. 33.
28. The complainant returned home and continued packing. TR p. 33.
29. On October 31, 2004, Pendergast called Burgess and informed her that the respondent would not rent the property to the complainant. Pendergast apologized to Burgess for the respondent's decision. TR pp. 131-132.
30. Burgess asked Pendergast for permission to call the respondent. Pendergast agreed and provided the respondent's home phone number. TR p. 132.
31. Burgess called the respondent and asked her why she had changed her mind about renting to the complainant. The respondent stated that her husband had

seen the forms (section 8) she had signed and did not want the government in their business and therefore she would not rent to the complainant. TR p. 133.

32. Burgess informed the respondent that the paperwork was required. The respondent persisted that she did not want anyone in “their” business. TR p. 133.
33. Burgess called the complainant to inform her of the respondent’s decision. TR p. 133.
34. The complainant was upset when she learned that the respondent would not rent to her. She cried and was upset because she believed she was to move the next day and had packed all of her belongings. TR pp. 40, 133-134.
35. The complainant called her older son, Jason Ortiz (Ortiz) and told him what happened. TR p. 40.
36. The complainant asked her landlord to allow her to stay in her apartment. He permitted her to stay and she agreed to sign a one year lease. TR p. 41.
37. Ortiz visited the complainant and unloaded her belongings from her truck. He observed that she was crying, upset and stressed. He also observed that she was sad and had difficulty sleeping. Ortiz observed that this continued for a couple of months. TR 109-110.
38. The complainant was upset for a month or two. She visited her doctor and informed him of the stress she felt and her problems sleeping. He informed her that her blood pressure was high and gave her pills to help her sleep. TR pp. 41-42.
39. Burgess spoke with the complainant’s section 8 social worker, Ellie Polonio, (Polonio) about the refusal to rent on or about November 1, 2004. Polonio asked

Burgess to inform the respondent that it was illegal to discriminate based on section 8 participation. Burgess called the respondent and informed her that it was illegal to discriminate against the complainant because she had section 8. TR pp. 136-137.

40. Burgess also called the Salvation Army and informed them that the check for the security deposit would not be necessary. TR pp. 137-138.
41. After canceling the rental, the respondent called Polonio and told her that the complainant had lied to her about the number of people who would be living with her in addition to her son. TR pp. 191-192.
42. Polonio told the respondent that that was not true. TR p. 191.
43. The respondent rented the apartment to tenants not utilizing a section 8 voucher, accepting a deposit on November 1, 2004. TR p. 275-276.

III.

DISCUSSION AND CONCLUSIONS

A.

Preliminary

All statutory and procedural prerequisites to the holding of a public hearing have been satisfied, and the complaint is properly before me, a human rights referee, for adjudication.

B.

The complainant's lawful source of income claims

According to General Statutes § 46a-64c (a) (1), it shall be a discriminatory practice "[t]o 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 . . . lawful source of income . . .." General Statutes § 46a-64c (a) (2) extends protection to discriminatory terms and conditions in sales and rental agreements and § 46a-64c (a) (3) makes it unlawful even to make a statement that indicates discrimination based upon a protected class, one such class being lawful source of income. Lawful source of income is defined as "income derived from social security, supplemental security income, housing assistance, child support, alimony or public or general assistance." General Statutes § 46a-63 (3). A section 8 voucher is considered "housing assistance" for the purposes of § 46a-64c. *Commission on Human Rights and Opportunities v. Sullivan Associates*, 250 Conn. 763, 775, reargument denied, 251 Conn. 924 (1999).

The evidentiary requirements for federal employment discrimination cases, such as those cases predicated upon Title VII, apply to both federal and state housing discrimination cases as well. *AvalonBay Communities v. Town of Orange*, 256 Conn. 557, 591 (2001). Both the "pretext" paradigm of *McDonnell Douglas v. Green*, 411 U.S. 792 (1973) and the so-called "mixed-motive" (also referred to as "direct evidence")

approach of *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) have been recognized by our courts as proper means of establishing housing discrimination based on protected class status. *AvalonBay v. Town of Orange*, supra, 592; *Miko v. Commission on Human Rights and Opportunities*, 220 Conn. 192, 202 (1991). Under the *Price Waterhouse* model, the complainant has the burden of establishing a prima facie case by demonstrating with direct—or even circumstantial—evidence, that she was a member of a protected class and that an impermissible factor played a substantial motivating role in the respondent's decision not to rent to her. *Levy v. Commission on Human Rights and Opportunities*, 236 Conn. 96, 106 (1996), citing *Price Waterhouse*, supra, 490 U.S. 258. The complainant readily demonstrated that she is a member of a protected class, insofar as it is uncontroverted that she received section 8 rental assistance. There is evidence, in the form of credible testimony, which resulted in my finding that the respondent told Burgess that she had decided not to rent to the complainant because her husband had seen the requisite section 8 forms she had signed and had told her he did not want the government in their business. Accordingly, the complainant has successfully met her prima facie burden of establishing a discriminatory refusal to rent predicated on source of income.

Once the complainant establishes a prima facie case, the burden shifts to the respondent to prove, by a preponderance of evidence, that he would have made the same decision for legitimate reasons even if he had not taken the ostensibly illegal factor into consideration. *Levy v. Commission*, supra, 236 Conn. 106.

During the public hearing and subsequent thereto in her briefings, the respondent made considerable efforts to attempt to justify her decision not to rent to the complainant by attempting to establish "legitimate reasons." These reasons included:

- The complainant failed to provide two months security.
- The complainant failed to provide a satisfactory credit report.
- The complainant failed to provide evidence of "good funds" for first month's rent and security by the deadline allegedly imposed by the respondent.

It is unfortunate that a good portion of the public hearing focused on the issues of the security deposit and the credit report. There is no question that the respondent at first sought two months security and was less than overwhelmed by the complainant's credit history, even after its perhaps dubious enhancement by Burgess. There is a record full of testimony relative to the impact these concerns allegedly had on the ultimate decision not to rent, testimony which produced credibility issues emanating from the testimony of both parties and several of their witnesses. All of this became largely academic when during the testimony of the respondent's last witness, Pendergast, she testified that she had some documents in her file which she had never produced, having allegedly assumed that the respondent already had them. True or not, this disclosure led to additional and previously unanticipated production, which in turn led to an additional day of public hearing, wherein C-11, C-12, substitute C-2 and substitute C-8 were admitted into evidence.

Before discussing these new exhibits (as well as others relevant to my decision), I would summarize the timeline from the findings of fact to put the exhibits in context.

The complainant's rental application was submitted on or about September 12, 2004. At some point thereafter (fully confirmed by the exhibits) the parties agreed to a monthly rental of $1,180 and a one month security deposit in conjunction with an occupancy date of November 1, 2004. Exhibit C-11 is a fully executed and witnessed offer to lease signed by the complainant and respondent on October 24, 2004 and calling for a monthly rental of $1,180 and one month's security. It was contingent only on the property meeting "Section 8 requirements" and installation of a replacement range – all within the control of the respondent. In fact, R-2 established the purchase by the respondent of such a range on October 28, 2004 with delivery slated for November 3, 2004. The offer to purchase is buttressed by the belated production of substitute C-2, a section 8 "Request for Tenancy" also executed by both parties on October 24, 2004, C-3, a section 8 "Landlord Certificate" signed by the respondent on October 27, 2004, C-6, a section 8 required W-9, executed by the respondent on October 27, 2004, C-7, a direct deposit authorization signed by the respondent on October 27, 2004 and substitute C-8, a Salvation Army security deposit agreement, also signed by the respondent on October 27, 2004. Finally, there is the proposed lease, prepared by Pendergast on or after October 26, 2004 evidencing a meeting of the minds on all issues, including the one month security deposit which was enhanced by the parties agreement on page three of the lease that the tenant (complainant) would be liable for all damages to the property in excess of the $1,180 security deposit.

Irrespective of all that went on between September 10, 2004 and the period of October 24 to October 27, 2004, during the latter time frame there was conclusive evidence of a

meeting of the minds, just days prior to scheduled occupancy. Nonetheless, the lease was not signed by the respondent and occupancy was not taken on November 1, 2004. It is the events that transpired between this late October time frame, and the respondent's decision not to rent (first communicated on October 31, 2004) that I must determine in this case. What happened to cause the respondent to change her mind?

The respondent testified (TR pp. 258-264) about a bizarre telephone call she received from Burgess, in which the realtor allegedly mocked the respondent's Jamaican accent, and in which the respondent claims she told Burgess that her client would have to have two month's security and one month's rent faxed to her office in money order form by October 30, 2004 or the deal would not go forward. She further testified that she told Pendergast of this "new" demand as well. TR pp. 258-264. Her testimony on the latter point was hesitant and not corroborated. The respondent also testified that she did not authorize Pendergast, to prepare a lease, TR p. 264. Pendergast actually contradicted the respondent on this point. TR p. 367.

Then after allegedly confirming with the Salvation Army that its $1,000 portion of the security deposit would not be issued by her claimed deadline, she allegedly called her realtor "early" in the morning on October 31, 2004 to inform her that she would not be signing the lease. TR p. 271. This too was contradicted by her realtor who testified that she did not hear from the respondent until the afternoon of October 31, 2004 (TR p. 356), a point eventually conceded in the respondent's post hearing briefs. The respondent's testimony is not credible on these key issues, nor on some peripheral

issues (e.g. alleged racial diatribes, lock changing), which issues are not necessary to further explore for purposes of rendering a proper decision. Hence I have not made specific findings of fact on some of these "diversionary" issues. As to the late formulated respondent demands, the respondent fails to address why these issues could not have been addressed and resolved on Monday, November 1, 2004 before keys were exchanged and the complainant took possession. This is especially true given the respondent's belated admission (in the post hearing briefs) that the one month security deposit remained acceptable to the end. I find these reasons pretextual.

Bordering on the disingenuous (and therefore detrimental to the respondent's overall credibility), was the respondent's failure to acknowledge that the missing document that caused the Salvation Army to delay the issuance of its security deposit contribution (TR p. 271), was the final section 8 property inspection approval, which approval was within the respondent's control and was arguably even jeopardized by the November 3, 2004 delivery of the new range to which she had agreed. R-2. Not only is much of the respondent's defense in direct contrast with key written exhibits, but it was often contradicted by the testimony of her own realtor, and simply not credible. I am charged to "…scrutinize the demeanor of a witness and assess his or her credibility." *Howell v Administrator, Unemployment Compensation Act*, 174 Conn. 529, 532 (1976).

More credible, and ultimately dispositive of this matter, are my findings, established by the testimony of Burgess that the respondent appeared reluctant to sign some of the section 8 documents, including the W-9, which would have necessitated that the section

8 rental payments be reported to the IRS, culminating in her testimony that the respondent told her in a phone call (in a last ditch effort to keep the deal together) that her husband, upon seeing the section 8 documents the respondent had signed, decided he did not want the government in their business. Hence, the complainant has established that the respondent's purported reasons for not renting to the complainant were not the true motivating factors. Rather it was the section 8 reporting requirements that caused the respondent not to rent to the complainant. While many landlords many share those sentiments, they do not constitute a lawful reason to reject a section 8 applicant. In fact, the respondent makes no such claim that it is.

C.

Damages

The complainant claims damages for emotional distress, her actual monetary losses and lawful interest. The authority to award damages under General Statutes § 46a-86 (c) includes the discretion to award damages for emotional distress and other non-economic harm. *Bridgeport Hospital v. Commission on Human Rights and Opportunities*, 232 Conn. 91 (1995).

The criteria to be considered when awarding damages for emotional distress include: (1) the subjective internal emotional reaction of the complainant; (2) whether the discrimination occurred in front of other people; and (3) the degree of offensiveness of the discrimination and its impact on the complainant. *Commission on Human Rights*

and Opportunities ex rel. Aguiar v. Frenzilli, CHRO No. 9850105, pp. 9-15 (January 14, 2000); *Commission on Human Rights and Opportunities ex rel. Harrison v. Greco,* supra, CHRO No. 7930433, pp. 15-17. A complainant need not present medical testimony to establish her internal emotional response to the harassment; her own testimony may suffice. *Schanzer v. United Technologies Corp.,* 140 F.Sup.2d 200 (D.Conn. 2000); *Berry v. Loiseau*, 223 Conn. 786, 811 (1992).

The factual findings confirm that the complainant endured some level of embarrassment and inconvenience as a result of the respondent's last minute decision. She was certainly embarrassed by the need to disclose the rejection to her sons and section 8 personnel. Nonetheless, the apparent reason given for her rejection (government paperwork), and its initial limited disclosure to the real estate agents, renders the emotional impact less egregious than it might otherwise have been. The amount of an award for emotional distress will be higher if the overt act of discrimination occurs in front of others. *Commission on Human Rights and Opportunities ex rel. Cohen v. Menillo,* CHRO No. 9420047 (June 21, 1995). An absence of a public display will usually warrant a lower award. *Peoples v. Estate of Eva Belinsky,* LW 4924601, Conn. Super. (November 8, 1988). The offensiveness of the remarks must also be weighed, and it should be determined if they were made with the intention of producing pain, embarrassment and humiliation. *Commission on Human Rights and Opportunities ex rel. Nelson v. Malinguaggio,* CHRO No. 9740155 (June 10, 1999) (landlord referred to complainant's children with vicious racial epithets in front of the complainant and her friend). The respondent's stated reason was not intended to harm.

The findings establish that the respondent announced her decision first to her realtor, Pendergast, who then informed the complainant's realtor, Burgess. Burgess then called the respondent who angrily confirmed her decision and based it on governmental involvement. Only then did Burgess inform the complainant, and we do not know the precise words used to convey the rejection.

The findings also establish that the respondent did, however, in a apparently pretextual attempt to avoid a housing discrimination complaint, call Polonio at the Danbury Housing Authority to accuse the complainant of having lied about the number of people who would be living with her, all of which was authoritatively rebutted by Polonio. At some point this accusation was relayed back to the complainant and caused further unspecified anguish.

The factual findings further support some limited medical history attributable to the incident, including a doctor visit, crying, sleeplessness, elevated blood pressure and sadness. As testified to, I find the existence of these symptoms credible, but underwhelming in their presentation. There is no evidence that the rejection was responsible for the elevated blood pressure.

Under a review of the circumstances and awards set forth and made in *Commission on Human Rights and Opportunities ex rel. Westphal v. Brookstone Court,* 2006 WL 463262 (Conn. Super.); *Peoples v. Belinsky, supra* and *Saddler ex.rel. Commission on*

Human Rights and Opportunities v. Landry, CHRO No. 0450057 (May 23, 2006) as well as the authorities cited by the parties in their brief, I find an award of $5,000 to be appropriate for emotional distress. While the illegal decision was made at the last minute causing maximum inconvenience, it was couched in relatively "benign" terms (not wanting the government in their business), was conveyed third hand, caused no apparent long term inconvenience and the emotional symptoms it caused were of limited duration and severity.

I choose to make no award for the rather nebulous claims related to the "loss" of amenities such as a swimming pool, washer and dryer and increased aesthetics inasmuch as there was insufficient evidence to support even an educated guess as to their monetary value and inasmuch as the rental cost of the complainant's previous apartment (then renewed) was never established. I cannot assume that the value of these amenities would not have been completely offset by a commensurate increase in the rent for the apartment at Willow Springs.

I award to the commission the sum of $39.92 for Connecticut State Marshall fees. CHRO-1

D.

Attorney's fees

The complainant also requests an award for reasonable attorney's fees as provided by General Statutes § 46a-86 (c). The accepted practice in Connecticut in arriving at a

reasonable attorney's fee award is to establish the "lodestar" figure, which is defined as the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. *Hemsley v. Eckerhart,* 461 U.S. 424, 433 (1983). Connecticut courts have found that the lodestar calculation may then be adjusted by the twelve factors set forth in *Johnson v. Georgia Highway Express, Inc.,* 488 F.2d 714, 717-19 (5th Cir. 1974). *Ernst v. Deere and Company, et al.,* 92 Conn. App. 572 (Conn. App. 2005). The *Johnson* factors are (1) the time and labor required, (2) the novelty and difficulty of the questions, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee for similar work in the community, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. The list is not exclusive and other factors may be applied to determine reasonableness. *Krack v. Action Motors Corp.,* 87 Conn. App. 687, 694-95, cert. denied, 283 Conn. 926 (2005).

The complainant's application for an attorney's fees award was supported by the filing of post hearing affidavits. The affidavits established a final time expenditure of 72.5 hours at a requested rate of $225 per hour. I paid special note to Attorney Kirschner's relatively modest total years of experience, his status as a staff attorney at the Connecticut Fair Housing Center, the additional support he presented to support his requested hourly rate, the complexity of the matter, the length of the hearing, the size of

the award, the thoroughness of the presentation, awards in similar matters and the need to adjust to an opponent who, for whatever reason, did not produce what proved to be key exhibits until after the conclusion of the public hearing as originally scheduled, and who made assertions in the post hearing briefs that were without any foundation in the record. I noted also a 2006 fee request of $250 per hour made by the supervisory attorney at the Connecticut Fair Housing Center, who possessed twenty years of experience, in the previously cited *Saddler* matter. I noted also the damages and attorney's fee awarded in that matter. While I do not dispute the actual expenditure of any of the time spent by the complainant's attorney, I employ the *Johnson* criteria as standards to govern the exercise of my discretion to arrive at the reasonable amount and cost of the time needed to achieve a result such as that obtained herein. Based upon all of the foregoing, and what I perceive to be lost opportunities to maximize the complainant's damages claim, I have adjusted the requested lodestar components downward and award legal fees in the amount of $10,500.

E.

Summary

The respondent shall pay:

1. To the complainant: $5,000 in compensation for emotional distress.
2. To the commission: $39.92 in compensation for payment of Connecticut Marshall fees.
3. To the complainant's attorney: $10,500 for a reasonable attorney's fee.

4. All monies paid to the complainant shall include prejudgment and post judgment interest in the amount of 10% compounded per annum to the date of payment of such monies to the complainant.
5. The respondent shall cease and desist from engaging in any discriminatory conduct with regard to any tenant or potential tenant.
6. The respondent shall include in all advertisements that it places for two years from the date of this order the statement that it is and Equal Housing Opportunity Provider, and shall forward all copies of any such advertisements to the commission at its administrative offices located at 21 Grand Street, CT 06106, attention Attorney Robert J. Zamlowski.

It is so ordered this _____ May 2007.

_____
J. Allen Kerr, Jr.
Presiding Human Rights Referee

cc.
Angela Pinto
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