

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
OFFICE OF THE ATTORNEY GENERAL
DIVISION ON CIVIL RIGHTS
DOCKET NO: HM14CT-06039
HUD NO: 02-06-0688-8

J. FRANK VESPA-PAPALEO, ESQ.,)
DIRECTOR, AND CARL FOSTER,)
)
COMPLAINANTS,)
)
VS.)
)
JOSEPH FABICS, JR.)
)
RESPONDENT,)

AGENCY DETERMINATION

Consistent with a Verified Complaint filed on July 27, 2006 and Amendment to the Verified Complaint, the above-named Respondent has been charged with unlawful housing discrimination within the meaning of the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) and specifically within the meaning of N.J.S.A. 10:5-12 (g) (1), (2) & (3) because of creed.

J. Frank Vespa-Papaleo, Esq., is the Director of the Division on Civil Rights and, in the public interest, has intervened as a Complainant in this matter pursuant to N.J.A.C. 13:4-2.2 (e).

SUMMARY OF COMPLAINT:

Complainant Carl Foster (hereinafter referred to as Complainant) alleged that the lease given to him by Respondent (hereinafter referred to as Mr. Fabics) provided that if someone hates God they should not move in. Complainant alleged that Mr. Fabics requires his tenants or prospective tenants to have similar beliefs in God to his, and that Mr. Fabics inquired about the faith and religious ideologies of tenants and prospective applicants for rental of his rooms. Complainant further alleged that he moved into Mr. Fabics' property on or about May 23, 2005, and refused to sign a lease because it contained religious references, and after months of strife and harassment by Mr. Fabics, he moved out in May 2006. Complainant is of the Episcopalian faith.

Complainant J. Frank Vespa-Papaleo, Esq., Director (hereinafter referred to as Director Frank Vespa-Papaleo), alleged that Mr. Fabics violated the New Jersey Law Against Discrimination

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(LAD), personally or through his agents, when he printed, published, circulated, issued, displayed, posted or mailed, or caused to be printed, published, circulated, issued displayed, posted or mailed a statement, advertisement or publication which expressed, directly or indirectly, a limitation, specification or discrimination as to an individuals creed. Specifically, Director Frank Vespa-Papaleo alleged that Mr. Fabics or his agents, violated the LAD when he placed advertisements on websites for the rental of his rooms that indicated a discriminatory preference or limitation for prospective applicants based on creed. Additionally, Director Frank Vespa-Papaleo claimed that Mr. Fabics' lease contained a discriminatory religious clause that placed a limitation or preference on prospective applicant's ability to rent based upon creed.

SUMMARY OF RESPONSE:

Mr. Fabics denied discriminating against Complainant for any unlawful reason including creed. Mr. Fabics stated there was no religious preference stated in Complainant's lease, and his tenants are of various creeds. Mr. Fabics asserted that Complainant was a disgruntled tenant who had been directed to vacate the premises. Mr. Fabics asserted that Complainant was advised to vacate because he refused to sign a lease and declined to perform cleaning requirements that all tenants had the responsibility to perform. Finally, Mr. Fabics asserted that Complainant never complained about religious discrimination of any kind during his tenancy and this issue was a fabrication in his complaint.

Mr. Fabics asserted that he places ads in the newspapers and put signs up around Rutgers University when he has an available room for rent. Mr. Fabics stated that there are no religious implications in his advertisements or leases.

Mr. Fabics further asserted the property in question is an owner occupied two family house and therefore exempt from claims brought under the New Jersey Law Against Discrimination. Mr. Fabics identified himself as Roman Catholic.

BACKGROUND:

Mr. Fabics owns a property at 203 Howard Street, New Brunswick, Middlesex County, New Jersey. Complainant rented a room in Mr. Fabics house in May 2005 and lived at this location until May 2006. Complainant did not sign a lease with Mr. Fabics during his tenancy.

Mr. Fabics house has two floors, the first and second floor units both consist of three bedrooms, a bathroom, kitchen and living room. Mr. Fabics occupies the largest bedroom on the first floor. The other five bedrooms are occupied by five different tenants that share cleaning responsibilities and utility costs.

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SUMMARY OF INVESTIGATION:

The investigation established insufficient evidence to support Complainant's allegations that he was discriminated against because of his creed. However, the investigation established evidence to support Director Frank Vespa-Papaleo's claim that Mr. Fabics' lease contained a discriminatory religious clause that placed a limitation or preference on prospective applicant's ability to rent based upon creed. Additionally, the evidence supported Director Frank Vespa-Papaleo claim that Mr. Fabics or through his agents, placed illegal rental advertisements on websites, when he referred to his residence as a "*Christian Household.*"

During the investigation, Complainant provided the Division's Investigator with a copy of the lease that was given to him by Mr. Fabics on or about May 23, 2005. Although, Complainant refused to sign the lease he was allowed to move into Mr. Fabics' dwelling on a monthly basis. This lease uncovered evidence that it contained an addendum entitled "*Emphatic Points.*" There are nine such points, the last of which stated, "***This is a Christian household. If you hate God do not move in.***" (Emphasis added) The other "*Emphatic Points*" deal with house rules such as, "*no dirty dishes in the sink-no exceptions; No slamming doors-close doors gently; You agree to your cleaning duty every month during 1st wk of month.*" This addendum requires the tenant's signature and concludes that, "*I read and understand these Emphatic Points for living at 203 Howard St., New Bruns. & will abide by them.*"

The investigation did not support Complainant's assertion that he refused to sign the lease because it contained the above described religious references. The evidence disclosed that Complainant refused to sign the lease because he found the terms and conditions to be unacceptable. Complainant was only planning to reside at Mr. Fabics' residence for a couple of months, but the lease was for a longer period of six months. Additionally, the lease contained provisions for sharing cleaning responsibilities and utility costs with other tenants. The investigation found that these lease provisions, particularly the shared cleaning obligations were not acceptable to the Complainant. Nonetheless, Mr. Fabics rented Complainant a room without signing a lease. Moreover, during Complainant's tenancy which extended for a period of twelve months without a lease, Complainant never raised any issues with Mr. Fabics regarding the religious references, until after he was evicted for unrelated reasons.

In Mr. Fabics' August 2006 written response to the Verified Complaint, it stated that Complainant refused to sign the lease because he only intended to rent for about a month. Mr. Fabics stated that Complainant was a disgruntled tenant who had to be evicted not because of any religious disagreement, but for neglecting to perform his house cleaning requirements. Mr. Fabics stated that Complainant's co-tenants complained about this failure to clean his own mess, including the common areas used by all tenants.

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Documented evidence revealed that on March 29, 2006, prior to Complainant vacating the premises in May 2006, Mr. Fabics forwarded the following letter to Complainant, entitled "*Cease & Desist*" that stated in part:

"You must sign lease to live in my house. You lied about your only one month stay . . . you keep telling me you are moving out soon. You must wash the floors every month-you refused to wash the floors for the last 8 months. Apartment is filthy and because of your laziness your roommates do not want to clean up after you. You are very selfish and constantly taking advantage of your roommates by making sure the apartment heat is not on . . . while you lavishly pigging out under your electric blanket and make sure your roommates pay your extra electric bill."

Mr. Fabics sent Complainant another letter dated April 10, 2006, entitled "*Notice to Quit & Vacate the Premises,*" which stated in part as follows:

"Due to your obstinate failure to comply with house rules and regulations, you are requested to vacate my premises of 203 Howard St. by May 1, 2006 . . . You refuse to sign the lease therefore you do not have any right to live in my owner-occupied home . . . you have no intention of participating in the upkeep and cleaning of the apartment."

In further support of Mr. Fabics position, two Affidavits were submitted by tenants that substantiated that Complainant failed to comply with Mr. Fabics' requirement that all tenants shared in the cleaning responsibility of the house. In May 2006, Complainant moved out of Mr. Fabics house after living there for a period of twelve months without a lease. During Complainant's tenancy he never raised any issues with Mr. Fabics regarding the religious references in the lease, until after he was evicted for unrelated reasons.

When interviewed by the Division's Investigator on September 25, 2006, Mr. Fabics explained that when he shows potential tenants rooms for rent he also shows them his room where the evidence of religious miracles are kept. Mr. Fabics stated that he has a lot of different religious items around the house. Mr. Fabics stated that he explains his beliefs to potential tenants because, "*I just want people to know that if they live with me, they will be living with someone very religious.*" Mr. Fabics further explained that the reason for the lease clause, "***This is a Christian Household. If you hate God do not move in,***" is in accordance with his preference for tenants who will not argue with him about his religious beliefs.

Regardless of Mr. Fabics' explanation, the evidence supported Director Frank Vespa-Papaleo claim that Mr. Fabics' lease contained discriminatory religious clauses that placed a limitation or preference on prospective applicant's ability to rent based upon creed.

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During the investigation, the Division's Investigator interviewed several tenants residing at Mr. Fabics' house. These tenants did not support Complainant's contention that Mr. Fabics required them to have similar beliefs in God to his, or that Mr. Fabics inquired about the faith and religious ideologies of those tenants for the rental of his rooms.

Mr. Keaveny stated that he lived in Mr. Fabics' house for the past fifteen months. When he first arrived to view the room for rent, Mr. Fabics showed him around the house and he expressed nothing more than his personal viewpoints on religion. Mr. Keaveny stated, "*by all accounts in my book, Mr. Fabics means well, and he's a good headed guy, and he wants to help other people. He is reasonable and has very easy rules and regulations to follow. He doesn't make you swear an allegiance to God or the devil or anything like that.*"

Another tenant, Eli Ritchey, who has rented a room in Mr. Fabics' house for eighteen months stated, "*he doesn't believe Mr. Fabics ever asked him about his religion . . . and that Mr. Fabics has never pushed his beliefs upon him.*"

Additional investigation conducted by the Housing Investigations Unit of the Division on Civil Rights discovered that Mr. Fabics or through his agents, placed two illegal rental advertisements on websites, when he referred to his residence as a "*Christian Household.*"

On September 19, 2006, an Investigator of the Division's Housing Unit accessed the domain, www.ruoffcampus.rutgers.edu. Within that domain the Investigator accessed page <http://ruoffcampus.rutgers.edu/search/qsearchresult.asp?sid=2>. This web page showed a rental advertisement for Mr. Fabics' house that stated in part:

*"203 Howard Street, New Brunswick \$500/month Single Room 1 of 3 bedroom(s) available, No smoking allowed, no pets allowed, walking distance to, Cook, Douglass, **Christian Household**"*(Emphasis added). *Contact Joe Fabics 732-846-5683-anytime.*

On October 25, 2006, the Investigator accessed another domain www.rwjms.umdnj.edu, page http://rwjms.umdnj.edu/student_affairs/orientation/RoomsforRent2005.htm, that stated in part as follows:

*" 203 Howard Street, New Brunswick, NJ 08901, Joe Fabics (732) 846-5683 . . . 1 bedroom in a house to share . . . close to campus; plenty of street parking, **Christian Household**"*(Emphasis added).

As described above, Mr. Fabics or through his agents, placed these illegal rental advertisement on websites referring to his residence as a "*Christian Household*" which indicated a specific preference or limitation for rental on the basis of creed, in violation of N.J.S.A. 10:5-12 (g) (3).

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Finally, Mr. Fabics claimed that his house is an owner occupied two family home, and therefore exempt from claims brought under the New Jersey Law Against Discrimination (LAD). Mr. Fabics relies upon an exemption in the LAD that is cited in N.J.S.A. 10:5-5 (n), "*of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence.*"

From the investigation and inspection of Mr. Fabics property, it is not initially apparent whether Mr. Fabics' dwelling is exempt from the LAD. The first and second floor units both consist of three bedrooms, a bathroom, kitchen and living room. Mr. Fabics occupies the largest bedroom on the first floor. The other five bedrooms are occupied by five different tenants. Mr. Fabics and the other tenants move freely between both units. The kitchen, bathroom and living room facilities are shared by the tenants. Mr. Fabics assigns cleaning duties to the tenants and attaches a cleaning schedule on the refrigerators. Mr. Fabics also places advertisements to replace individual tenants.

Additionally, Mr. Fabics' dwelling does not fall within the conventional definition "*of a single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence.*" The dwelling does not contain two separate single apartments to constitute a conventional two family home, and although Mr. Fabics resides on the first floor unit, he occupies this unit with two other tenants. Notwithstanding Mr. Fabics' claim that his property is exempt, the LAD exemption for an owner occupied dwelling only applies to the rental of the property, but not to illegal advertising or discriminatory clauses in a lease.

ANALYSIS:

At the conclusion of an investigation, the Division is required to make a determination as to whether "probable cause" exists to credit a complainant's allegations of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination as a reasonable ground for suspicion supported by facts and circumstances strong enough to warrant a cautious person to believe that the law was violated and that the matter should proceed to hearing. Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 111 S.Ct. 799. A finding of probable cause is not an adjudication on the merits but, rather, an "initial culling-out process" whereby the Division makes a preliminary determination of whether further Division action is warranted. Sprague v. Glassboro State College, 161 N.J. Super. 218, 226 (App. Div. 1978). See also Frank v. Ivy Club, supra, 228 N.J. Super. at 56. In making this decision, the Division must consider whether, after applying the applicable legal standard, sufficient evidence exists to support a colorable claim of discrimination under the LAD.

In this case, the evidence did not support Complainant's allegations that he was discriminated against on the basis of his creed. The investigation disclosed that Complainant declined to sign a lease because he found the terms and conditions to be unacceptable, and not for reasons related to the religious references in the lease or not having similar beliefs in God as Mr. Fabics. Complainant was permitted to rent a room without signing the lease for a period of twelve months, until he was evicted for consistently failing to perform cleaning responsibilities required of all tenants.

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The investigation established sufficient evidence to support Director Frank Vespa-Papaleo charge that Mr. Fabics' lease contained discriminatory religious clauses that placed a limitation or preference on prospective applicant's ability to rent based upon creed. Moreover, the evidence supported Director Frank Vespa-Papaleo charge that Mr. Fabics violated the LAD, personally or through his agents, when he placed discriminatory rental advertisements on websites. These advertisements cited a "*Christian Household*," which emphasized an explicit discriminatory preference or limitation for potential tenants based on creed.

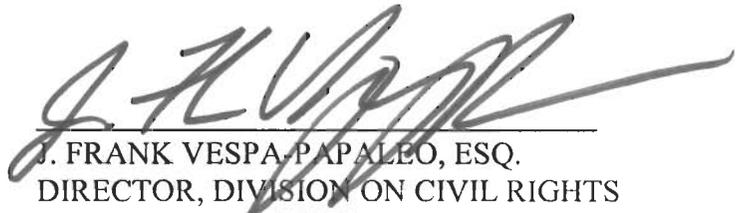
FINDING OF PROBABLE CAUSE:

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint filed by Complainant Frank Vespa-Papaleo, regarding Mr. Fabics' discriminatory lease references and his illegal rental advertisements.

FINDING OF NO PROBABLE CAUSE:

It is, therefore, determined and found that there is No Probable Cause to credit the allegations of the complaint filed by Complainant Carl Foster.

11/27/06
DATE



J. FRANK VESPA-PAPALEO, ESQ.
DIRECTOR, DIVISION ON CIVIL RIGHTS
OFFICE OF THE ATTORNEY GENERAL
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