



STATE OF NEW JERSEY
 OFFICE OF THE ATTORNEY GENERAL
 DEPARTMENT OF LAW & PUBLIC SAFETY
 DIVISION ON CIVIL RIGHTS
 OAL DOCKET NO. CRT 11434-06
 DCR DOCKET NO. HR14WT-06004-H

LEONARD BANKS,

Complainant,

v.

MARIA SIDLOV,

Respondent.

ADMINISTRATIVE ACTION
 FINDINGS, DETERMINATION
 AND ORDER

APPEARANCES:

Brian O. Lipman, Deputy Attorney General, prosecuting this matter on behalf of the New Jersey Division on Civil Rights (Anne Milgram, Attorney General of New Jersey, attorney), for the complainant.

Maria Sidlov, respondent, pro se.

BY THE DIRECTOR:

I. INTRODUCTION

This matter is before the Director of the New Jersey Division on Civil Rights (Division) pursuant to a verified complaint filed by Leonard Banks (Complainant) alleging that Maria Sidlov (Respondent) refused to rent him a room in her rooming house because of his physical disability (End Stage Renal Disease) and his source of lawful income used for rental payments (Supplemental Security Income (SSI) and Social Security Disability (SSD) payments), in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A.10:5-1 to -49. The matter was transmitted to the Office of Administrative Law (OAL) for a hearing pursuant to N.J.S.A. 52:14B-1

to-12. On June 8, 2007, the Honorable Walter M. Braswell, Administrative Law Judge (ALJ), issued an initial decision¹ concluding that Respondent violated the LAD, assessing Respondent a penalty of \$500.00, and awarding the State attorney's fees and costs. Having independently reviewed the record, the Director adopts the ALJ's initial decision as modified herein.

II. PROCEDURAL HISTORY

On May 26, 2006, Complainant filed a verified complaint with the Division alleging that Respondent refused to rent him a room because of his physical disability and source of lawful income to be used for rental payments, in violation of the LAD.² In support of his claim, Complainant alleged that on or about May 22, 2006, he contacted Respondent by telephone and inquired about a room for rent. Complainant alleged that during the conversation he advised Respondent about his disability and source of income. Complainant alleged that Respondent informed him she would not rent the room to him because he was disabled and did not have a job.

After completing its investigation, on September 21, 2006 the Division issued a finding of probable cause supporting Complainant's allegations of unlawful discrimination. On November 28, 2006, this matter was transmitted to OAL for a hearing on the merits, and a pre-hearing conference was held on February 7, 2007. The matter was heard on May 26, 2007, and post hearing briefs were filed on June 4, 2007. The ALJ issued his initial decision June 11, 2007. On June 25, 2007, Complainant filed exceptions to the initial decision, and on the same date the Deputy Attorney General submitted a request for attorney's fees and a certification of attorney services. The Director's final decision is due to be issued on July 23, 2007.

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Hereinafter, "ID" shall refer to the written initial decision of the ALJ; "Ex.C" shall refer to Complainant's exhibits admitted into evidence at the administrative hearing; and "Ce" shall refer to Complainant's exceptions to the initial decision.

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Complainant also filed a complaint with the U.S. Department of Housing and Urban Development (HUD) alleging he was discriminated against because of his disability.

III. THE ALJ'S DECISION

Findings of Fact

The ALJ's findings of fact appear undisputed in the record, and can be summarized as follows. Complainant is a single male who suffers from End Stage Renal Disease. This disease affects the kidneys and requires that Complainant receive dialysis three times per week. Complainant receives SSI and SSD rental assistance. Respondent owns and operates a rooming house consisting of eight individual rooms located in Paterson, New Jersey.

On or about May 22, 2006, Complainant contacted Respondent by telephone and inquired about renting a room. ID 2. Respondent contends that when Complainant contacted her there were no vacant rooms available. Respondent got in touch with Complainant one month later to inform him that she had a vacancy. Complainant testified that since Respondent had initially discriminated against him, he no longer was interested in living in her facility. ID 3.

Respondent denied discriminating against Complainant for any unlawful reason including disability and/or source of lawful income. Respondent maintained that she did not know Complainant had a disability at the time Complainant inquired about the availability of a room, and denied that she told Complainant he could not have a room because of his disability or because he did not have a job. ID 3. Respondent stated in her answer to the complaint that there were no rooms available at the time Complainant contacted her, but "by pure coincidence" she had evicted a tenant at the time she received the complaint and, therefore, she later had an empty room to show Complainant. Ibid.

Respondent also stated in her answer that although she did not know Complainant was sick until she was served with the complaint, she nevertheless "would of [sic] suggested to Mr. Banks that due to his illness, a more private situation may be better because the complainant needs access to a bathroom at any moment." ID 3. The ALJ specifically found that "in her answer, during the prehearing telephone conference, and at the hearing [Respondent] testified that she did not

think that her rooming house would be the right place for someone who has a physical disability.” ID 3-4. The reason she gave for her position was that the rooms have neither cooking facilities nor individual bathrooms. Complainant testified that he was aware that the rooms had limited facilities, but that he still wanted to live there. ID 4. In addition, the Division’s investigator testified that Respondent told her that she would not rent to someone who was not working even if they received Section 8 rent subsidies, and that she would not rent to sick people because they spread disease. ID 2.

In addition to these undisputed facts, in the course of his legal discussion the ALJ made certain findings concerning disputed facts that are critical to the outcome of this case. First, the ALJ rejected Respondent’s contention that she had no rooms available for rent when Complainant initially contacted her by telephone to inquire about a room. Despite Respondent’s denial, the ALJ specifically found that “the particulars of her conversation with the complainant at the time and as acknowledged in her answer indicates that there was in fact a room available when the complainant inquired.” ID 5. The second important finding relates to whether Respondent was aware of Complainant’s disability and source of income during that May 22, 2006 conversation. The ALJ unequivocally found that Complainant “has demonstrated that..Respondent denied the rental of the apartment to the complainant based on the complainant’s source of income and disability.” ID 4.

Conclusions of Law

The ALJ observed that a complainant can demonstrate a violation of the LAD by direct or circumstantial evidence. ID 4, citing Bergen Commercial Bank v. Sisler, 157 N.J. 188, 208 (1999). To establish a case of discrimination based on direct evidence, the complainant must present evidence, which if found to be true, demonstrates without inference or presumption not only hostility towards a protected class, but also a direct causal connection between that hostility and the challenged action. Ibid. The ALJ noted that statements made by the ultimate decision maker may meet the direct evidence standard if they are made while taking the adverse action, and if they

communicate discriminatory animus and bear directly on that action. ID 4-5, citing McDevitt v. Bill Good Builders, Inc., 175 N.J. 519, 528 (2003). Where such direct evidence is presented, the burden shifts to the respondent to persuade the judge that it would have made the same decision even if it had not considered the impermissible factor. ID 5, citing Sisler, supra, 157 N.J. at 209.

The ALJ initially found that Complainant has demonstrated that he belongs to a protected class in that he has a physical disability; that on May 22, 2006, he spoke to Respondent and applied for a room renting for \$100.00 per week; that Respondent had a room available for rent; and that Respondent denied him the rental of the room based on Complainant's physical disability and source of income. ID 4.

The ALJ then concluded that Complainant's testimony at the hearing established a prima facie case of unlawful discrimination, and Respondent failed to articulate a legitimate non-discriminatory basis for denying Complainant the right to rent a room in her facility. Based on his finding that there was a room available when Complainant inquired, the ALJ concluded that Respondent's proffered reason for denying the lease of a room was not true. ID 5. Accordingly, the ALJ found that Respondent violated the LAD by refusing to rent a room to Complainant because of his disability and source of lawful income. ID 6.

Turning to the issue of remedies, the ALJ concluded that there was no evidence that Complainant suffered damages from an out-of-pocket loss as a result of the discrimination and, therefore, awarded no economic damages. ID 6. The ALJ recognized, however, that victims of unlawful discrimination in violation of the LAD are entitled to damages for emotional distress, ID 5, and acknowledged that Complainant testified that he was depressed and humiliated by Respondent's refusal to rent to him. ID 6. Nevertheless, the ALJ found the extent of Complainant's depression and humiliation to be minimal, and awarded no damages for emotional distress. ID 6.

The ALJ also recognized that the LAD provides for a penalty of up to \$10,000 against a respondent who has violated the statute. In this case, the ALJ concluded that the violation "was

not egregious or outrageous to warrant a substantial penalty,” and that since this violation was “a minor unintentional transgression,” Respondent shall be fined in the amount of \$500.00.

Finally, the ALJ found that, as a prevailing party under the LAD, the State is entitled to attorney’s fees and ordered the State to submit a certification of counsel fees to be paid by Respondent. Ibid.

IV. THE PARTIES’ EXCEPTIONS

Respondent did not file any exceptions to the ALJ’s initial decision. However, the Deputy Attorney General (DAG), prosecuting this matter on behalf of the New Jersey Division on Civil Rights, takes exception to the ALJ’s failure to award Complainant damages. The DAG maintains that although the ALJ found that Complainant’s pain and humiliation was minimal, that was sufficient to entitle him to some threshold award. Ce2-3. In addition, the DAG takes exception to the ALJ’s penalty of \$500.00 for Respondent’s violation of the LAD, arguing that the award fails to protect the public interest by deterring others from committing similar violations of the law. Ce 3-4. Finally, the DAG takes exception to the ALJ’s failure to order Respondent to cease and desist from future discrimination. Ce 5.

V. THE DIRECTOR’S DECISION

The Director’s Factual Findings

The Director concludes that the ALJ’s findings of undisputed fact recited above are supported by the record and, accordingly, the Director adopts those findings as his own.

The Director also adopts the ALJ’s finding that Respondent had a vacant room at the time Complainant telephoned her on May 22, 2006, and further adopts the ALJ’s finding that Respondent’s denial of a room to Complainant was based on her knowledge of his disability and source of lawful income. The ALJ heard conflicting testimony from the witnesses regarding both factual issues. Generally, the Director must give substantial weight to the ALJ’s credibility determinations and to all findings based on these determinations, since it was the ALJ who had an

opportunity to hear the testimony of the witnesses and to assess their demeanor. See Clowes v. Terminix International, Inc., 109 N.J. 575, 587(1988); Renan Realty Corp. v. Dept. of Community Affairs, 182 N.J. Super. 415, 419 (App. Div. 1981). Here, Complainant alleged that he advised Respondent of his disability and source of lawful income during their conversation, and that Respondent indicated that she would not rent a room to him for those reasons. ID 2. Respondent, on the other hand, denied any knowledge of Complainant's disability or source of income, and insisted that she refused to rent to Complainant because she had no rooms available. It is clear from the findings in the ID that the ALJ found Complainant more credible and believed his version of events, but expressly rejected Respondent's explanation of why she denied Complainant the rental. Moreover, it is significant in this context that Complainant's allegations are consistent with explicit statements contained in Respondent's answer to the complaint and testimony at the hearing which express an intention to discriminate based on disability and source of lawful income. ID 3, Ex.C-4. Accordingly, based on the entire record, the Director adopts the ALJ's factual findings, disputed and undisputed, as set forth in the initial decision and as summarized above.

Legal Standards and the Director's Conclusions

The LAD prohibits a landlord or owner of real property from refusing to rent a room or apartment to a person because of that person's disability or source of lawful income to be used for rental payments. N.J.S.A. 10:5-12 (g) & (h). A complainant may attempt to prove unlawful discrimination under the LAD by either direct or circumstantial evidence. Bergen Commercial Bank v. Sisler, 157 N.J. 188, 208 (1999). To prevail in a direct evidence case, complainant must present evidence which, if true, demonstrates "not only a hostility toward members of the [individual's] class, but also a direct causal connection between that hostility and the challenged decision." Ibid. In determining whether sufficient direct evidence has been adduced, "a court must consider whether a statement made by a decision maker associated with the decisionmaking process actually bore

on the [rental] decision at issue and communicated proscribed animus. McDevitt v. Bill Good Builders, Inc., 175 N.J. 519, 528 (2003). Where a complainant presents such evidence, the burden shifts to the respondent to persuade the decision maker that it would have made the same decision even if it had not considered the impermissible factor. Sisler, *supra* at 209.

The crux of Complainant's complaint, which he has consistently alleged throughout these proceedings, is that Respondent informed him that she would not rent a room to him because he is a disabled person who does not work and instead relies on government assistance for rental payments. Applying the foregoing legal standards to the facts of this case, the Director concludes that Complainant has established a prima facie case of unlawful housing discrimination based on direct evidence presented at the hearing. As noted by the ALJ, Respondent stated at the hearing, in her answer to the verified complaint, and during interviews with the Division's investigator that she would not rent a room to a sick person because such a person would need "a more private situation," and would "spread disease." ID 3-4, Ex.C-2,4. Respondent also stated to the Division's investigator that she would not rent to an individual who did not work, even if he received government assistance. ID 2, Ex.C-3. These statements by Respondent constitute sufficient direct evidence of discrimination based on disability and source of lawful income to establish a prima facie case under the LAD. See Myers v. AT&T, 380 N.J. Super. 443 (App. Div. 2005) (Statement of plaintiff's supervisor in her deposition that plaintiff's work performance was inferior partly because plaintiff had been treated for cancer deemed sufficient direct evidence to present a prima facie disability claim under the LAD).

The presentation of a prima facie claim based on direct evidence requires Respondent to prove that she would have taken the same action against Complainant even if she had not considered factors related to Complainant's disability and source of income. Bergen Commercial Bank v. Sisler, *supra*, 157 N.J. at 209. Thus, Respondent bears a weightier burden than in a

circumstantial evidence case.³ Instead of merely meeting a burden of producing some evidence of non-discriminatory reasons for its action, in a direct evidence case a respondent must prove that it would have made the same decision even if it had not considered the discriminatory factor.

McDevitt v. Bill Good Builders, *supra*, 175 N.J. at 527. In the present case, the Director finds that Respondent failed to meet her burden of proof. The ALJ found that Respondent's assertion that she did not have an available room when Complainant called on May 22, 2006 was not true, ID 5, and the Director has adopted that finding. Respondent has presented no other evidence to demonstrate that she would have denied Complainant the rental absent discriminatory factors. Accordingly, the Director concludes that Respondent has failed to sustain her burden to rebut Complainant's prima facie case under the direct evidence analysis and, therefore, that Complainant has sustained his burden to prove intentional discrimination in violation of the LAD.

VII. REMEDIES

A. Emotional Distress Damages

It is well established that a victim of unlawful discrimination under the LAD is entitled to recover non-economic losses such as mental anguish or emotional distress proximately related to unlawful discrimination. Anderson v. Exxon Co., 89 N.J. 483, 502-503 (1982); Director, Div. on Civil

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Although the ALJ in his legal discussion set out the standards applicable in a direct evidence analysis, he apparently applied the burden-shifting framework for circumstantial evidence cases under the LAD. A plaintiff can establish a prima facie housing discrimination claim using circumstantial evidence by showing that plaintiff is in the class of persons the statute is intended to protect; defendant was aware that plaintiff is a member of a protected class; plaintiff was ready and able to accept defendant's offer to rent or lease; and defendant refused to rent an apartment to plaintiff. Pasquince v. Brighton Arms Apartments, 378 N.J. Super. 588, 599 (App. Div. 2005). The burden then shifts to the defendant to articulate a legitimate, non-discriminatory reason for denying the apartment. If this is satisfied, plaintiff bears the burden of proving that the defendant's articulated reason was merely a pretext for unlawful discrimination. Ibid. Here, the record establishes that Complainant met his initial burden of establishing a prima facie case of unlawful discrimination; Respondent rebutted the prima facie case by claiming there was no room available; and Complainant proved that this reason was a pretext for discrimination. Therefore, the Director concludes that Complainant also proved a violation of the LAD using circumstantial evidence.

Rights v. Slumber, Inc., 166 N.J. Super. 95 (App. Div. 1979), mod. on other grounds, 82 N.J. 412 (1980); Zahorian v. Russell Fitt Real Estate Agency, 62 N.J. 399 (1973). Such awards are within the Director's discretion because they further the LAD's objective to make the complainant whole. Andersen, supra, 89 N.J. at 502; Goodman v. London Metals Exchange, Inc., 86 N.J. 19, 35 (1981). As provided in an amendment to the LAD, emotional distress damages are available in LAD actions filed with the Division to the same extent as in common law tort actions. N.J.S.A. 10:5-17.

A victim of discrimination is entitled, at a minimum, to a threshold pain and humiliation award for enduring the "indignity" which may be presumed to be the "natural and proximate" result of discrimination. Gray v. Serruto Builders, Inc., 110 N.J. Super. 297, 312-313, 317 (Ch. Div. 1970). Thus, pain and humiliation awards are not limited to instances where the complainant sought medical treatment or exhibited severe manifestations. Id. at 318; Tarr v. Ciasulli, 181 N.J. 70, 82 (2004) (compensatory damages for emotional distress resulting from willful discriminatory conduct require a far less stringent standard of proof than that required for a tort-based emotional distress cause of action, and do not require serious psychological harm). Here, Complainant testified that he was depressed and humiliated by Respondent's refusal to rent to him. ID 6. The Director concludes that an award of \$2,500.00 in emotional distress damages is appropriate in this case.

B. Penalties

In addition to any other remedies, the LAD provides that the Director shall impose a penalty payable to the State Treasury against any respondent who violates the statute. N.J.S.A. 10:5-14.1a. The maximum penalty for a first violation of the LAD is \$10,000. Ibid. The ALJ assessed a penalty of \$500.00 against Respondent based on his findings that the violation was not egregious, and instead a "minor unintentional transgression," and that Respondent showed "good faith" by offering Complainant a room subsequent to receiving the complaint. After a review of the record, however, the Director concludes that a \$500.00 penalty is inappropriate in this case. The record establishes that Respondent's discriminatory acts were indeed intentional and based on the very preconceptions about people with disabilities who rely on government assistance that the LAD is

meant to eliminate. Moreover, because the amount of damages in a housing discrimination case such as this are typically small, a civil penalty represents an important deterrent to those who would commit acts of discrimination. Therefore, the Director concludes that a penalty in the amount of \$2,500.00 is appropriate.

C. Counsel Fees

A prevailing party in a LAD action may be awarded “a reasonable attorney’s fee.” N.J.S.A. 10:5-27.1. See, also, Rendine v. Pantzer, 141 N.J. 292 (1995). Where, as here, Complainant’s case was prosecuted by the attorney for the Division, counsel fees and costs may be assessed against Respondent. N.J.S.A. 10:5-27.1. The Director concludes that it is appropriate to make an award of attorney fees in this case.

DAG Brian O. Lipman, who prosecuted this matter, submitted an application for \$7,507.50 in counsel fees. His application was supported by his own certification of the time expended for specific legal services in this case, from October 26, 2006 through June 24, 2007. The New Jersey Supreme Court has determined that the starting point for calculating a reasonable attorney’s fee is computation of the “lodestar,” which is derived by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate. Rendine v. Pantzer, supra, 141 N.J. at 334-35. Counsel requests \$175 per hour for his work in prosecuting this matter, based on his years of experience. The Director finds this hourly rate to be reasonable, as it is less than the prevailing rates in the relevant community for attorneys of comparable skill and experience. Id. at 337.

To be compensable, a certification of services must be sufficiently detailed to allow meaningful review and scrutiny. Rendine v. Pantzer. Id. at 335. In this case, the DAG has submitted sufficiently detailed billing summaries showing the hours expended and services rendered, commencing with DAG Lipman receiving the case for hearing. After careful review, the Director finds that the hours expended are reasonable and necessary in light of both the nature of the litigation and the results achieved. Therefore, the Director grants counsel’s application for \$7,507.50 in attorney’s fees.

VIII. ORDER

Based on all of the above, the Director concludes that Respondent subjected Complainant to unlawful discrimination in violation of the LAD. Therefore, the Director orders as follows:

1. Respondent and its agents, employees and assigns shall cease and desist from doing any act prohibited by the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49.

2. Within 45 days from the date of this order, Respondent shall forward to the Division a certified check payable to Complainant in the amount of \$2,500.00 as compensation for his pain and humiliation.

3. Within 45 days from the date of this order, Respondent shall forward to the Division a certified check payable to "Treasurer, State of New Jersey," in the amount of \$2,500.00 as a statutory penalty.

4. Within 45 days from the date of this order, Respondents shall forward to the Division certified funds payable to "Treasurer, State of New Jersey" in the amount of \$7,507.50 for attorney's fees.

5. The penalty and all payments to be made by the Respondent under this order shall be forwarded to Robert Siconolfi, New Jersey Division on Civil Rights, 31 Clinton Street, Newark, New Jersey 08721.

6. Any late payments will be subject to post-judgment interest calculated as prescribed by the Rules Governing the Courts of New Jersey, from the due date until such time payment is received by the Division.



DATE: July 23, 2007

J. FRANK VESPA-PAPALEO, ESQ.
DIRECTOR
NEW JERSEY DIVISION ON CIVIL RIGHTS

JFVP:GL/LR