



STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO.: AB13BR-01568

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

Complainants,

v.

ON THE RIVER REALTY, LLC, d/b/a
CENTURY 21 ON THE RIVER REALTY,
FAUSTO DIAZ, and ELIZABETH ROMERO,

Respondents,

FINDING OF PROBABLE CAUSE

Consistent with a Verified Complaint filed on April 19, 2006, by Complainant J. Frank Vespa-Papaleo, Esq., Director of the New Jersey Division on Civil Rights, the above-named Respondents have 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. 10:5-4, and 10:5-12 (e) and (h)(1), (3) and (5) of said law based on familial status (children under the age of 18).

SUMMARY OF COMPLAINT

Complainant alleged that Respondents violated the New Jersey Law Against Discrimination (LAD), personally or through their agents, when it 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, a limitation, specification or discrimination upon families which include children under 18 years of age. Specifically, Complainant alleged that Respondents or through their agents, violated the LAD when they placed an advertisement on the Website "Craigslist" for the rental of an apartment that indicated a discriminatory preference and limitation for prospective applicants who have children under the age of 18. Additionally, Complainant alleged that Respondents were aware that Rawda B., LLC and Badawy M. Badawy (owners of the subject property located at 2738 Kennedy Boulevard, Jersey City, New Jersey) maintained discriminatory rental practices in refusing to rent to applicants with children under 18 years of age, and provided assistance in the furtherance of these discriminatory rental practices. Moreover, Respondents demonstrated a pattern of making statements and

J. Frank Vespa-Papaleo, Director vs. On The River Realty, F. Diaz, & E. Romero
Docket No.: AB13BR-01568

inquires in connection with the prospective rental of real property which expressed directly a limitation, specification or discrimination as to the age of the children of the prospective tenant.

SUMMARY OF RESPONSE

Respondent Century 21, On The River Realty operates a real estate agency located at 725 River Road, Suite 101A, Edgewater, New Jersey. With regards to the merits of the complaint it asserted *"that the circumstances which precipitated its filing should unequivocally be considered as an isolated event occasioned by the wholly innocent, inadvertent, and, unfortunately, uninformed, activity of a real estate salesperson employed by Respondent Century 21, On The River Realty. This is supported by the bald and direct statements set forth in the underlying advertisement which are clearly violative of the Law Against Discrimination. Consequently, there was no inherent or malicious intent to discriminate or undermine this legislation through deceptive or tacit practices. Rather, a salesperson, acting independently and without any direction (or awareness) by Respondent On The River Realty, apparently attempted to honor the request of an owner (as indicated in the Verified Complaint) without recognizing the magnitude and ramifications of the ultimate conduct."*

Respondent Fausto Diaz¹ employed as a real estate Salesperson by Century 21, On The River Realty (hereinafter On The River Realty) did not dispute that he and On The River Realty improperly listed and showed the subject apartment at 2738 Kennedy Boulevard, Jersey City, New Jersey. However, Mr. Diaz stated this was an error of inadvertence and immediately upon learning of this serious infraction he took remedial action. Mr. Diaz stated that he sent his client, Rawda B., LLC. written notice that its request to rent the apartment to people without children was in violation of the law and must be amended at once. Furthermore, he amended the improper online listing on April 10, 2006.

Respondent Elizabeth Romero, employed as a real estate salesperson by On The River Realty, denied any acts of unlawful discrimination. Ms. Romero denied that she placed any advertisement for the rental of the subject property. Ms. Romero admitted that she appeared at the property to show Tester #2 the apartment. Ms. Romero denied that any alleged discriminatory statement by Dr. Badawy was directed at her and denied that she had assisted in any discriminatory actions.

SUMMARY OF INVESTIGATION

This investigation established sufficient evidence to support a reasonable suspicion that Respondents engaged in unlawful housing discrimination when they placed a discriminatory advertisement for the rental of an apartment. Respondents explicitly placed a discriminatory limitation of a protected class in their advertisement for rental that excluded families with children under the age of 18 and further evidence was found that Respondents made inquiries in connection with the prospective rental of an apartment which expressed directly a limitation as to the age of

¹Fausto Diaz was issued a Real Estate Salesperson License from the New Jersey Real Estate Commission on August 16, 2004, license number 0456887.

J. Frank Vespa-Papaleo, Director vs. On The River Realty, F. Diaz, & E. Romero
Docket No.: AB13BR-01568

the children, in violation of N.J.S.A. 10:5-12 (h) (1), (3) and (5). Additionally, Respondents provided aid and assistance to the owners of the property in furtherance of its discriminatory rental practices, in violation of N.J.S.A. 10:5-12 (e)

On April 4, 2006, an Investigator of the Housing Investigations Unit of the Division on Civil Rights accessed the domain, www.newjersey.craigslist.org (Craigslist). Within that domain he accessed the following Web Page: <http://newjersey.craigslist.org/apa/148117612.html>. This page described an advertisement for the rental of a two-bedroom apartment which stated in part:

*"Bright and charming two bedroom apartment just blocks away from Journal Square. Easy commuting to NYC. Dishwasher and refrigerator included, small pet okay! **no children** (Emphasis added), no dogs. To view contact Century 21 On the River Realty 201 943 9003"*

Records obtained from Craigslist revealed that the above described advertisement was posted on April 4, 2006, from the email address SANDRA.LUNA@CENTERY21.COM. The records confirmed that the email address belonged to an employee of On The River Realty, Sandra Luna, Office Administrator, and the advertisement was posted from the Company's IP address 72.43.116.79. This evidence disputes Respondent On The River Realty's contention that salesperson Fausto Diaz acted independently and without any direction or awareness by On The River Realty.

During the investigation, the Division on Civil Rights utilized two undercover testers in an effort to investigate Respondents' housing advertisement which expressed a direct discriminatory limitation that denied families with children under 18 years of age the opportunity to rent an apartment. Testers are persons who, without the intent to rent an apartment, seek information about the availability of dwellings to determine whether discriminatory housing practices are occurring.

On April 5, 2006, an employee of the Division on Civil Rights (Tester #1) called 201-943-9003, which was the contact number listed in the advertisement. When Tester #1 mentioned the ad on Craigslist she was referred to agent Fausto Diaz. Mr. Diaz asked Tester #1 who would be living in the apartment. Tester #1 told Mr. Diaz that she, her husband, and her three-year-old son would be living there. Mr. Diaz stated that the owner of the property did not want any small children living there, but said that he would confirm that fact. Mr. Diaz called Tester #1 approximately one hour later and confirmed that the property owner (Dr. Badawy) would not rent to a tenant with a child. The conversation was then terminated.

On April 5, 2006, an employee of the Division on Civil Rights (Tester #2) called 201-943-9003, which was the contact number listed in the advertisement. When Tester #2 inquired about the apartment, she was referred to agent Elizabeth Romero. Ms. Romero described the apartment to Tester #2 and asked her how many people would be renting, to which Tester #2 replied that she would be renting the apartment. An appointment was made to rent the apartment, and on April 7, 2006, Tester #2 met Ms. Romero at the apartment. The apartment was located on the second floor of the building with the first floor being the office of a medical practice for Dr. B.M. Badawy. While

Ms. Romero showed Tester #2 the apartment, Dr. Badawy arrived and introduced himself as the owner of the apartment. While viewing the apartment with both Ms. Romero and Dr. Badawy, Tester #2 commented that the small bedroom would be perfect for her nine-year-old son and inquired about the nearest school where she could register her son. Dr. Badawy looked at Ms. Romero and said, "I thought you said she had no children." Ms. Romero then asked Tester #2, "I thought I asked you yesterday if you had any children and you said no." Tester #2 responded that you must have misunderstood me, I meant only one person would be on the lease. Dr. Badawy further stated to Tester #2 that he would not rent "because kids are destructive and I work with kids in my practice downstairs, I know how they can be, they are noisy and make too much noise running around." Dr. Badawy further stated he only wanted "singles or a couple" to rent the apartment. The conversation ended and Tester #2 left the apartment.

As described above, Respondents not only placed a discriminatory advertisement for rental on the Website Craigslist, but provided aid and assistance to the owners of the property in furtherance of their discriminatory rental practices. Respondents were aware that Rawda B., LLC and Badawy M. Badawy, maintained discriminatory rental practices of refusing to rent to applicants with children under 18 years of age. Additionally, Respondents verbally reinforced their discriminatory advertisement and Dr. Badawy's discriminatory preference to the Testers, by articulating that they would not rent to families with children.

ANALYSIS

At the conclusion of the investigation, the Division is required to make a determination whether "probable cause" exists to credit a complainant's allegation of discrimination. Probable cause has been described under the New Jersey Law Against Discrimination (LAD) 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.

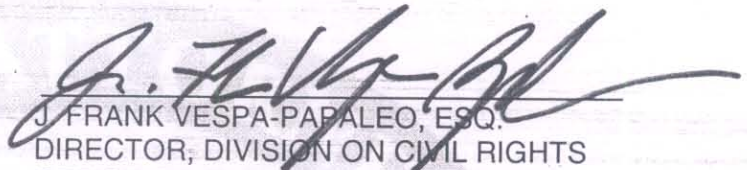
In this case, the evidence established sufficient evidence to support a reasonable suspicion that Respondents engaged in unlawful housing discrimination based on familial status. Respondents explicitly placed a direct discriminatory limitation of a protected class of persons in their advertisement on the Website Craigslist, which denied prospective applicants who have children under the age of 18 an opportunity to rent an apartment. Moreover, Respondents reinforced their discriminatory policy included in their internet advertisement by expressing to Testers that families with children would not be accepted for tenancy. Additionally, Respondents were aware that Rawda B., LLC and Badawy M. Badawy, owners of the subject property, maintained discriminatory rental practices in refusing to rent to applicants with children under 18 years of age, and provided assistance in the furtherance of these discriminatory rental practices.

J. Frank Vespa-Papaleo, Director vs. On The River Realty, F. Diaz, & E. Romero
Docket No.: AB13BR-01568

FINDING OF PROBABLE CAUSE:

It is, therefore, determined and found that Probable Cause exists to credit the allegations of the complaint.

1/26/07
DATE


J. FRANK VESPA-PAPALEO, ESQ.
DIRECTOR, DIVISION ON CIVIL RIGHTS
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW & PUBLIC SAFETY