

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by Linda C. Johnson,
Commissioner, Department of Human Rights,

Complainant,

FINDINGS OF FACT,
CONCLUSIONS AND
ORDER

vs.

Bud Reinke,

Respondent.

The above-entitled matter came on for hearing before Administrative Law Judge J on L. Lunde, commencing at 9:10 a.m. on Tuesday, September 30, 1986, at the Office of Administrative Hearings in Minneapolis. The hearing was held pursuant to a Complaint and a Notice and Order for Hearing dated June 5, 1986. The record closed at the conclusion of the hearing on September 30, 1986.

Deborah J. Kohler, Special Assistant Attorney General, 1100 Bremer Tower, 7th Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Complainant. The Respondent, Bud Reinke, did not appear at the hearing or at any other time during the course of this proceeding.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case and under Minn. Stat. 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 through 14.69.

STATEMENT OF THE ISSUES

The issues in this case are as follows:

1. Whether the Respondent refused to sell, rent, or lease any real estate to the Charging Party on the grounds of her sex, contrary to the provisions of Minn. Stat. 363.03, subd. 2(1)(a) (1984),
2. Whether the Respondent engaged in a reprisal against the Charging

Party because of her association with a black male, contrary to the provisions of Minn. Stat. 363.03, subd. 7(2) (1984), and

3: The damages sustained by the Charging Party as a result of the Respondent's discriminatory practices, if any, and the action that should be taken to effectuate the purposes of the Minnesota Human Rights Act.

Based upon all the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 5, 1986, a copy of the Complainant's Complaint and the Notice and Order for Hearing were served on the Respondent by certified mail (No. 11944).

2. The Respondent has not appeared in this proceeding. He has not filed a Notice of Appearance, Answered the Complaint, responded to discovery requests, or appeared at any hearings held in this case.

3. On July 25, 1986, the Complainant filed a Motion for Summary Judgment on the issue of the Respondent's violation of the Minnesota Human Rights Act as set forth in the Complaint. The Motion was based upon the Respondent's failure to file an Answer. A copy of the Complainant's Notice of Motion and Motion for Partial Summary Judgment was served upon the Respondent by first class mail on July 24, 1986. The Respondent did not contest the Motion within the ten-day period required under Minn. Rule 1400.6600 (1985), and the Respondent did not appear at the noticed hearing on the Motion, which was held at the Office of Administrative Hearings at 9:00 a.m. on Monday, August 18, 1986.

4. On August 19, 1986, an Order was issued holding the allegations in the Complaint to be admitted as a result of the Respondent's failure to file an Answer, and finding that the Respondent discriminated against the Charging Party on the basis of her sex, contrary to the provisions of Minn. Stat. 363.03, subd. 2(1)(a), and engaged in an illegal reprisal against her on the basis of her association with a black male, contrary to the provisions of Minn. Stat. 363.03, subd. 7(2). A copy of that Order was mailed to the Respondent by first class mail on August 19, 1986 and an additional copy was served upon the Respondent at his home in Brooklyn Park, Minnesota by the Hennepin County Sheriff on August 20, 1986.

5. At all times material to this case, Bud Reinke was the owner of a three bedroom house located at 1316 16th Avenue North in Minneapolis, Minnesota. Reinke is in the remodeling business, and he frequently purchases houses in need of repair to remodel and resell. He is a casual acquaintance of the Charging Party, Danielle O'Neill, a white woman.

6. In early May, 1985, one of the O'Neill's sons was looking for a home,

so O'Neill asked Reinke if he had any houses to rent. He told her that he had nearly finished remodeling the house on 16th Avenue and she agreed to look at it.

7. O'Neill was very excited about the house when she saw it. It was nicer and more spacious than the one she lived in, and when she learned that the rental (\$350 monthly) was the same as she was paying to live on Golden Valley Road, she decided that she should rent it for herself and her two minor daughters.

8. O'Neill and her daughters made several trips to the house in May, and they all agreed that they should rent it. The daughters were especially pleased because it had a garden and a bedroom for each of them, and because it was across the street from the high school.

9. Eventually, in May, O'Neill and Reinke orally agreed that O'Neill would rent the house at a monthly rental of \$350, and O'Neill paid Reinke \$150 toward the first month's rent. O'Neill was to begin occupying the house on June 1, 1985, when Reinke expected that new carpeting for the first floor would be laid. The carpeting was the last improvement planned before occupancy. Reinke was very cordial with O'Neill at this time, and he even promised to obtain a mortgage on the house that she could assume if she bought the house. He said he would make it easy for her.

10. After her agreement with Reinke was made, O'Neill gave notice that she was terminating her tenancy on Golden Valley Road, and she filed a change of address form with the Post Office listing the 16th Avenue house as her new address.

11. Late in May, 1985, after the incidents already mentioned, Reinke told O'Neill that the house on 16th Avenue would not be ready for her on June 1. Since she had already given notice to her current landlord and had to move, Reinke told O'Neill that she could move into another house of his on Sheridan Avenue for a month. He promised that the 16th Avenue house would be available on July 1, and that he would put a stove and refrigerator in the Sheridan Avenue home for her to use. O'Neill agreed to move there for a month.

12. In early June, Reinke came to O'Neill's home on Golden Valley Road to tell her that some mail she had been expecting at the 16th Avenue house had not been delivered. During his visit with her that day, Reinke learned that O'Neill was dating a black male. When he did, Reinke returned the Charging Party's \$150 deposit telling her that it was not needed. After that, he also told her that the house on 16th Avenue would not be available until sometime in August, 1985, but assured her that it would be available before school started.

13. On or about June 15, 1985, the Charging Party moved into the Sheridan Avenue apartment. At that time, the apartment did not have a furnace and the stove and refrigerator Reinke promised to provide had not been installed.

14. O'Neill made frequent inquiries about the stove and refrigerator after she moved into the Sheridan Avenue property. Each time, Reinke promised speedy installation. About three weeks after she moved in, Reinke stopped by. O'Neill told him that she needed the stove and refrigerator he promised to furnish and asked him when they would arrive. When she made that inquiry, Reinke told her that he was not going to get a "fucking stove or refrigerator." He also told her that she had "broken his bubble" and he made several references about her "nigger boyfriend" to O'Neill and her two minor daughters. While leering at her, he said that he would like to "fuck her brains out" but he added, while laughing, that he suspected that her "nigger boyfriend" was already doing that. He also told her that he had the keys to her apartment and that he might come in and rape her when she was alone. When O'Neill asked him about the house on 16th Avenue, he told her that he would not renege on his promise to rent it to her even though he did not like the

fact that a black man might be there with her. After Reinke left, O'Neill felt humiliated and ashamed, and was so sick to her stomach that she vomited. She was persuaded that Reinke would never rent the 16th Avenue house to her and was not sure she would take it if he did. Although she did not believe Reinke would rape her, his remarks made her anxious and she made certain that she was not left alone in the house after his remarks.

15. After O'Neill's conversation with Reinke, he advertised the 16th Avenue house in the Minneapolis Star and Tribune, and he refused to respond to her inquiries regarding that advertisement. Thereafter, O'Neill had no contact with Reinke before school started, and the stove and refrigerator were never delivered, so she bought them with her own money.

16. In early September, O'Neill's rent check was not delivered to Reinke because of a change in his business address. When he did not receive his payment from her he came to the Sheridan Avenue home and threatened to evict her. He also told her the house on 16th Avenue would not be available for a long time because it needed a new boiler.

17. On October 1, 1985, when cold weather came, O'Neill was forced to move from the Sheridan Avenue home into a heated apartment on 21st Avenue. The 16th Avenue house Reinke had promised to rent to her was still not available at that time. O'Neill paid a monthly rental of \$375 on 21st Avenue until July 1, 1986 when she moved to a new location having a monthly rental of \$250.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. That the Administrative Law Judge has authority to consider the charges in this case under Minn. Stat. 363.071 (1984) and 14.50 (1984).

2. That the Complainant has complied with all substantive and procedural requirements of statute and rule.

3. That the Respondent received timely and proper notice of the hearing in this matter.

4. That the Respondent is in default in this proceeding and the allegations of and the issues set out in the Notice and Order for Hearing may be taken as true or deemed proved as a result of that default under Minn. Rule

1400.6000 (1985).

5. That the allegations of and issues set out in the Complaint were established with a preponderance of the evidence, apart from the Respondent's default.

6. That at all times material to this case, the Respondent was the owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent, or lease the 16th Avenue home for purposes of Minn. Stat.

363.03, subd. 2(1) (1984).

7: That the Complainant made a prima facie showing that the Respondent's failure to rent the three bedroom house to the Charging Party was based on her sex and her association with a black male.

8. That the Respondent has failed to rebut the inference of discrimination raised by the Complainant's prima facie showing of discrimination or to otherwise provide a nondiscriminatory explanation for his actions.

9. That the Respondent refused to rent the three bedroom house he promised to rent to the Charging Party because of her sex and because of her association with a black male contrary to the provisions of Minn. Stat. 363.03, subd. 2(1)(a) and subd. 7(2) (1984).

10. That under Minn. Stat. 363.071, subd. 2, the Charging Party should be awarded three times the increased rental she was required to pay in order to obtain a suitable place to live when the house on 16th Avenue was not made available to her, and that award should be made for the nine month period from October 1, 1985 through June 30, 1986 at the rate of \$75 per month or \$675.

11. That the Charging Party should not be reimbursed for the refrigerator and stove she purchased while a resident at the Sheridan Avenue property.

12. That the Charging Party should not be reimbursed for her moving expenses to the Sheridan Avenue property or the property on 21st Avenue because those expenses would have been incurred regardless of the Respondent's discriminatory acts.

13. That the Respondent's discriminatory practices caused the Charging Party to suffer a great deal of mental anguish and suffering and she should be compensated in the amount of \$4,000 as a result.

14. That based upon the seriousness of the Respondent's actions, the public harm occasioned thereby, and its intentional nature, it is concluded that the Respondent should pay a civil penalty to the state in the amount of \$1,500.

15. That punitive damages in the amount of \$2,000 should be awarded to the Charging Party because the Respondent's actions show a willful indifference to the Charging Party's rights and the interests of the state in eradicating housing discrimination.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED:

1. That the Respondent shall pay to the Charging Party \$675 in compensatory damages.
2. That the Respondent shall pay a civil penalty to the state in the amount of \$1,500.

3: That the Respondent shall pay to the Charging Party the sum of \$4,000 for her mental anguish and suffering.

4. That the Respondent shall pay \$2,000 to the Charging Party for punitive damages.

5. That the Respondent shall cease and desist from discriminating against persons in the sale, lease or rental of real estate on the basis of their sex or their association with persons of a different race.

Dated this 8th day of October, 1986.

JON L. LUNDE
Administrative Law Judge

Reported: Taped

MEMORANDUM

The Respondent is charged with two statutory violations. The first is a violation of Minn. Stat. 363.03, subd. 2 (1) which reads, in part, as follows:

It is an unfair discriminatory practice:

(1) For an owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent, or lease any real property, or any agent of these:

(a) to refuse to sell, rent, or lease or otherwise deny two or withhold from any person or group of persons any real property because of * * * sex * * *

The Respondent is also charged with a violation of subdivision 7 of that statute which reads, in part, as follows:

Subd. 7. Reprisals. It is an unfair discriminatory practice for any * * * owner, lessor, lessee, sublessee, assignee or managing agent of any real property, or any real asset broker, real estate salesperson or employee or agent thereof to intentionally engage in any reprisal against any person because that person:

(2) Associated with a person or group of persons who are disabled or who are of different, race, color, creed, religion, or national origin.

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. * * *

As a result of the Respondent's failure to answer the Complaint and his failure to appear at the hearing, the allegations of the Complaint and the issues set out therein may be deemed proved without the presentation of evidence. Even if that were not true, the Complainant presented sufficient evidence to establish that the Respondent discriminated against the Charging Party on the basis of her sex and is guilty of a reprisal against her because she associated with a person of a different race. While the Respondent clearly discriminated against the Charging Party on the basis of her sex, it is clear that his actions were primarily the result of a reprisal resulting from her association with a black man.

Generally speaking, the elements of a prima facie case of the discriminatory refusal to rent real property to an individual consists of a showing that the house was on the open market for lease, that the Charging Party was willing and able to rent on the terms specified, that the Charging Party advised the owner that she was able to rent, that the owner refused to rent the property, and there is no apparent reason for the refusal other than the individual's sex, race or other protected classification. *Houston v. Benttree, Ltd.*, 637 F.2d 739, 741 (10th cir. 1980). The Complainant established all those elements in this case, and showed that there was no apparent reason other than her sex and her relationship with a black male for the Respondent's ultimate refusal to rent her the house on 16th Avenue. His refusal, under the facts of this case, establish that he discriminated against the Charging Party on the basis of her sex, and committed a reprisal against her because her relationship with a black man. Although the Respondent never specifically refused to rent the house on 16th Avenue to the Charging Party, it is clear from his actions that he had no intention to rent it to her and deliberately engaged in a variety of tactics to discourage her from renting that property. He failed to equip the house on Sheridan Avenue with a stove and refrigerator after promising to do so, threatened the Charging Party with a possible rape, used racially derogatory language when discussing her boyfriend, and delayed making the house she had agreed to rent from him available for several months, even though the only thing that needed to be done to make that house ready for occupancy was to install new carpeting. The deliberate use of such tactics is discriminatory. *Wilson v. Sixty-six Meimore Gardens*, 106 N.J. Super. 182, 254 A.2d 545 (1969). The advertisement he placed for that property makes it clear that it could have been occupied before the Charging Party was forced to move from Sheridan Avenue because it had no available heat. All the facts clearly establish that the Respondent discriminated against the Charging Party on the basis of her sex and on the basis of her relationship with a black male.

As a result of the Respondent's discriminatory actions, the Charging party

is entitled to recover the actual damages she sustained. Those damages consisted of the increased rental she was forced to pay to obtain a comparable place to live at the rate of \$25 per month for nine months. In view of the small amount of compensatory damages the Charging Party incurred, it is appropriate to award her three times those actual damages, as is permitted by statute. This is especially true because the Respondent failed to provide a stove and refrigerator to the Charging Party at the Sheridan Avenue property, for discriminatory reasons, thereby substantially reducing the value of that property to her.

It is not appropriate, however, to award the Charging Party the amount she paid to acquire a stove and refrigerator. Her actual compensatory damages were the lost use of a stove and refrigerator during the three months she lived on Sheridan Avenue. The rental cost of those appliances for that period of time is unknown, but it is clear that they would not come close to the cost of purchasing those appliances. It is not appropriate to reimburse her for the cost of purchasing those two appliances under these circumstances. Likewise, it is not appropriate to reimburse her for the costs she incurred when she moved to the Sheridan Avenue home. She agreed to move there before the Respondent was aware of her relationship with a black male and the record does not show that the Respondent arranged for her to move into that home for discriminatory reasons. Similarly, the cost the charging party incurred to move from the Sheridan Avenue property should not be reimbursed. Even if the Respondent had made the other property available to her, she would have incurred those moving expenses. Since those costs would have been incurred whether or not the Respondent engaged in any discrimination against her, they are not properly reimbursable in this case.

The Charging Party should also be awarded \$4,000 for the mental anguish and suffering she had as a result of the Respondent's discriminatory acts. The Charging Party and her family were very excited about the 16th Avenue property because the Charging Party's daughters would have each had separate bedrooms and one of the daughters would have had a garden available, which was important to her. Moreover, both girls were looking forward to attending a new high school and to being across the street from that school. The Respondent intentionally destroyed those dreams for discriminatory reasons, and he humiliated, scared and sickened the Charging Party with racial and sexual remarks made while leering and laughing at her.

In addition to the actual compensatory damages set forth above and reimbursement for the Charging Party's mental anguish and suffering, the Charging Party should be awarded punitive damages and the Respondent should be

assessed with a civil penalty. In assessing the amount of the appropriate civil penalty to be imposed, the Judge is required under Minn. Stat.

363.071, subd. 2, to consider the seriousness and extent of the violation, the public harm occasioned by it, its intentional nature, and the financial resources of the Respondent. In this case, the Respondent's actions show a discriminatory attitude toward women, especially those who associate with black males. The dual nature of his discriminatory actions compounds the seriousness of the violations in this case, and there is no question that his actions were intentional. Since the state has a strong interest in promoting integrated housing, and of protecting women from the abuses that occurred in this case, it is concluded that the Respondent should pay a civil penalty of \$1,500 to the state. The Respondent's financial resources need not be

considered because he failed to present any evidence regarding those resources.

In addition, the Respondent should be ordered to pay the Charging Party punitive damages in the amount of \$2,000. Under Minn. Stat. 549.20, punitive damages are allowable only upon clear and convincing evidence that the prohibited act showed a willful indifference to the rights of others. In this case, the Respondent's actions, as mentioned above, clearly and convincingly show a willful indifference to the rights of the Charging Party.

In awarding punitive damages, the Judge must consider the seriousness to the public from the Respondent's actions, the profitability of the misconduct to him, the duration of the misconduct and its concealment, the Respondent's awareness of the risks of his action, and of its excessiveness, and the Respondent's attitude and conduct upon discovering the misconduct, as well as his financial condition. All of those factors support an award of punitive damages in this case and the Judge is persuaded that the sum assessed is appropriate to prevent such actions in the future and in view of the deliberate nature of the misconduct and the Respondent's awareness of his actions. Since the actual compensatory damages awarded to the Charging Party are not significant, it is appropriate to increase the punitive damages awarded to her, especially given the difficulty that is always involved in assessing the appropriate amount of damages for mental anguish and suffering.

J. L. L.

