

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by Marilyn E. McClure,
Commissioner, Department of Human Rights,
State of Minnesota,

Complainant,

VS.

FINDINGS OF FACT
CONCLUSIONS OF LAW,

and

ORDER

Lyle Czech,

Respondent.

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, on Wednesday, June 3, 1981, commencing at 9:30 a.m., at the Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota. The hearing continued through Thursday, June 4, 1981. Judith G. Menadue, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of the Minnesota Department of Human Rights (hereinafter the "Complainant" or "Department"). David E. Krause, Esq., of Krause, Rollins, Piper & Alvey, Attorneys at law 310 Groveland Avenue, Minneapolis, Minnesota 55403, appeared as counsel on behalf of Lyle Czech (hereinafter the respondent). The record closed on Friday, June 19, 1981 upon the receipt of the Respondent's brief.

STATEMENT OF ISSUES

The issues in this case are whether the Respondent discriminated against an applicant desiring to lease a mobile home lot on the basis of that applicant's sex and marital status, contrary to Minn. Stat. 363.03, subd. 2(1)(a); whether the Respondent engaged in a reprisal against the lessee of a mobile home lot for filing charges alleging an unfair discriminatory practice by him

contrary to Minn. Stat. sec. 363.03, subd. 7(1); and if Respondent committed any violations of Chapter 363, the damages or other relief the parties aggrieved thereby are entitled to receive pursuant to Minn. Stat. 363.071, subd. 2.

NOTICE

Pursuant to Minn. Stat. 363.071, subd. 2 (1980), this order is the final decision in this case and under Minn. Stat. 363.072 (1980), the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 15.0424 and 15.0425 (1980).

FINDINGS OF FACT

1. The Respondent, Lyle Czech, is the owner of Restwood Terrace Mobile Home Park (hereinafter "Restwood") which is located in New Brighton, Minnesota. Restwood consists of 176 mobile home lots, an office building and two play areas. In August, 1977, at the time of the incidents involved in the charges

under consideration, 156 of Restwood's lots were rented. Residents at Restwood own their mobile homes and rent lots from respondent under a standard form rental agreement Sidi incorporates, by reference, various rules applicable to them. All applicants for rental in restwood are required to complete a standard form application and must be personally approved by the Respondent.

2. On August 1, 1977, Larry Dahler was a lessee at Pestwood residing at 3555 92nd Avenue in a single-wide (14 x 60') 1973 Rollohome mobile home. He had purchased his Rollohome new just prior to becoming a tenant in August, 1973 Since Dahler was building a rina home in Anoka, on August 1, 1977, he listed his Follohome with Mobilhome Minnesota for sale at a net flat price of \$7,000 Under this arrangement, Mobilhome Minnesota would retain, as its commission, the sales price less \$7,000.

3. on August 29, 1977, -after an inspection of the Dahler home, Robert Swanson signed an agreement to purchase it for \$8,200. Under the terms of the purchase agreement, Swanson's possession was scheduled for October 1, 1977. The sale was contingent upon Swanson's ability to secure respondent's approval to rent the lot on the space then rented by Dahler. Barbara Herke, Mobilhome Minnesota's salesperson, advised SWanson that in order to obtain a lease of Dahler's lot, he must apply at the Restwood office. It was customary for Mobilhome Minnesota's salespersons to contact the owners of mobile home parks when the sale of a tenant's dwelling was made.

4. (Ai August 30, 1977, during a chance encounter with restwood's park managers, Shorty- and mary Lou Swanson (no relation to Robert Swanson), Dahler asked if Robert Swanson had been in to the office to apply" at that time, he was advised that there was a "new policy under which single males would not be admitted to restwood and that Swanson could apply bAut that he would be re-used.

5. later that day, or early the next day, Dahler, who did not know Robert Swanson's marital status, called Mobilhome Minnesota to find out if he was married and to advise them of the new policy regarding single males.

6. On August 31st, Robert SWanson was advised of the policy against sin-

gle males by Richard Zerba, Mobilhome Minnesota's president. Zerba told Swan-son to make an immediate application because he wanted to challenge the new policy. Robert Swanson went directly to the Restwood office to apply. When he arrived, Mary Lou Swanson advised him that there was no point in completing an application since single males would not be accepted because they don't "Water the grass" and have "wild parties." Swanson protested that policy and insisted on completing an application.

7. The application form used by the Respondent at Restwood in 1977 (Ex.

3) is a short one-page form designed to elicit, among other things, the follow-

ing information:

NAME

CHILDREN No.

NAMES AND AGES

MOBILE HOME: Make

YEAR

SIZE:

VALUE

Swanson listed his name on the application form, indicated that he had no children and correctly identified the name, year, size and value of the mobile home he intended to purchase from the Dahlers.

B. During the application process, Roert Swanson was provided with a copy of Restwood's rules which he discussed with the manager, Mary Lou. While discussing the rule on visitor registration, Swanson mentioned the fact that he had three children (a prior marriage) who might visit him from time to time and he asked how the registration rule would apply to them. When Mary Lou heard about the three children, she advised him that Restwood did have a policy precluding the rental of space for a single-wide mobile home to anyone with more than two children. While Mary Lou did not say too much about his three children, she did inquire regarding the chances of a reconciliation between Robert Swanson and his former wife. He advised her that if there was a reconciliation, he would move back into his former residence.

9. On September 8, 1977, Dahler was notified by a Mobilhome Minnesota employee that Swanson's application had been rejected. The same day, when he went to the Restwood office to find out why, Mary Lou advised him that Swanson's application had been denied under the policy against single males. Only after he protested a denial on those grounds did Mary Lou also mention that Restwood had a policy against the rental of single-wide mobile homes to the parents of more than two children. Mary Lou advised Dahler further that the respondent had made the final decision, that it was his park, and that he could do whatever he desired in its operation.

10. On September 10, 1977, Dahler spoke to Czech on the telephone regarding the denial. Czech admitted that Swanson had been rejected because he was a single male saying that single males don't take care of their lots and chase women. Dahler informed Czech that he was disappointed with his decision and would pursue the matter further. After Dahler threatened to challenge the rejection of the Swanson application, Czech mentioned Swanson's poor attitude and the fact that he was the non-custodial parent of three children as additional reasons for rejecting his application.

11. On September 10th, Swanson advised Dahler that since his application to rent the Dahler lot had been denied, he was no longer interested in purchasing-

ing Dahler's mobile home.

12. (Xi September 14, 1977, Larry Dahler and Robert Swanson filed charges of discrimination on the basis of sex and marital status against the Respondent under Minn. Stat. 363.03, subd. 2(1) (a) . On September 21, 1977, during a telephone conversation regarding those charges, the Respondent told John L. Kirwin of the Attorney General's staff, that Swanson's application had been denied because he was the non-custodial parent of three children and parents of more than two children were prohibited from occupying a single-wide mobile home in Restwood and that One skirting on the Dahler Rollhome was improper, not being white, diamond-embossed.

13. During the month of October, 1977, 55 of Restwood's lots were rented to married persons, 18 were unmarried males, and 11 were unmarried persons with children. With respect to applications for rental by single males, during the two-year period from August 1, 1976 to August 31, 1978, Restwood received

17 applications. (lily Robert Swanson's application was rejected.1 Prior to Swanson's rejection, eight applications from single males had been approved.

However, six of those eight applicants were cohabiting with a single woman whose name appears on the application form. In the case of the Kassube application, both persons signed the application, and in the case of the Mbeller application, only the woman signed the application noting that she was soon to be married to Moeller. Two of these six "single males", in addition to cohabiting with females, reported children who would presumably reside at restwood.

14. In a subsequent letter to the Attorney General's office dated November 23, 1977, Czech said his position on Swanson was twofold: "first, his attitude toward the Park rules left a considerable amount to be desired, and second, it is Park policy to allow parents of no more than two children into a single home and three in a double-wide. As long as these children are minors, whether or not they have temporary custody is really incidental."

15. During a telephone conversation with Zerba sometime in October, Czech stated that Swanson's application had been denied because he was a single male and that Czech wanted to keep a family park.

16. At the hearing, however, Czech testified that the reasons for his denial of the Swanson application were that Swanson was the non-custodial parent of more than two children, that Swanson's attitude toward restwood's policies was unacceptable, and that tenants with minor children were not allowed to reside in that area of the park where the Dahler Rollohome was located because of the dangers to children posed by a nearby drainage ditch.

17. In the west end of restwood, there is a drainage ditch which posed a potential safety hazard to children living in the area. However, there was a play area located immediately adjacent to that construction ditch and families with children had been rented lots in the past in the area of the construction ditch and adjacent to the Dahler lot and the ditch.

18. According to One Respondent, it had always been Restwood's policy to permit the parents of only two children to occupy a single-wide mobile home.

However, that alleged policy was not uniformly imposed against applicants who had more than two children &Lo would reside at restwood), was not applied to applicants who were ncn-custodial parents of more than two children, and was not applied to residents as their families Stew.

19. Cni September 26, 1971 Mark -and Vicki Suggs signed an agreement to purchase tne Dahler rollohome for \$7,9000. (Ai October 1, 1977, Vicki Suggs completed an application to lease the lot on which the Dahler mobile home was located. Prior to approving the Suggs application for rental, Shorty Swanson, Restwood's manager, required Larry Dahler to install additional anchoring equipment on the rollohome. On October 8, 1977, Dahler installed the necessary additional anchoring tie-downs to the underframe of his Rollohome and the Suggs

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1 Although Respondent's Exhibit G. lists 19 applicants, only 17 can be considered as applications from single men. 'Me application forms, Exhibit A, show no application from a Virgil Buhlis on July 13, 1978. On that date, there was an application from -a Virgil F. Dahlin (7), but it was also signed by Lor-raine M. Dahlin (?), apparently his spouse. Furthermore, the application from Bob Schultz was not an application for lot rental but merely an application to reside in the mobile home located on the lot rented by Bill and Connie Schultz.

were then approved for rental by, the Respondent. They moved into the Dajler mobile home on November 26, 1977.

20. On October 19, 1977, Larry Dahler filed an additional charge of illegal reprisal by the respondent in violation of Minn. Stat. 363.03, subd.7(1).

The charge alleged that the Respondent's requirement that Dahler install additional tie-down equipment to his Follohome prior to the approval of the Suggs' application, was imposed upon him solely because Dahler had previously filed a charge of discrimination against the respondent.

21. The State Building Code, 2 MCAR 1.9010 et seq., generally regulates mobile homes. Section 1.90450 C.4.b. requires ties to connect ground anchors and the main structural steel frame which runs lengthwise under mobile homes. This state requirement, when originally adopted, was not enforced by the Respondent against existing residents, such as the Dahlers. Instead, the Respondent would require all new tenants to properly secure their mobile homes pursuant to the terms of the State Building Code. Thus, when the Suggs applied for rental of the Dahler lot, One respondent required that the Dahler rollhome be properly tied down before a change in tenancy would be permitted. This was consistent with the respondent's past practice.

22. Upon the denial of Robert Swanson's application for rental at Rest-

nod, Samson, working with agents of Mobilhome Minnesota, began looking at her, more expensive mobile homes in the \$9,500 to \$12,000 range. Swanson
ot
was required to examine mobile homes in this price range because no homes were available for sale at a cheaper price. He looked at three or four other mobile homes before making an offer to purchase a 1974 skyline mobile home which was located in the North Star Mobile Home Park. The offer was made on September 17, 1977 at a price of \$9,500, and a possession date of October 1, 1977. like the sale of the Dahler rillhome, the purchase included personal property consisting of a stove, refrigerator, washer, dryer, shed, drapes and a central air conditioner. The monthly lot rental on the home Swanson ultimately purchased,

like the rental of One Dahler lot, was \$B5.00 per month. 'Me 1974 Skyline was of comparable value to the 1973 Rollohome.

23. Swanson's out-of-pocket expenses on the Skyline mobile home he purchased were \$1,758.77 greater than his out-of-pocket expenses would have been had the sale of the Dahler rollohome been completed. That out-of-pocket difference in expense is broken down as follows:

Expense	Rollohome	skyline	Difference
Downpayment	\$ 820.00	\$ 950.00	130.00
28 monthly installments	3440.36	3977.12	536.76
Pay off of	7,004.14	8,096.50	1,092.01
		total out-of-pocket Expenses	\$1,75 8.7 7

The difference consists of the greater down-payment, the greater monthly installments he paid while he owned the Skyline, a period of 28 months, and the greater the payoff on the Skyline, when sold, compared to what the payoff of One rollohome would have been at the time the Skyline was actually sold.

24. As a result of Respondent's rejection of Swanson's rental application, Larry Dahler incurred expenses he would not otherwise have incurred. First, he was obligated to pay an additional two months lot rental from and after the originally, proposed closing date of October 1, 1977 in the amount of \$B5.00 per month, or a total of \$170, and in addition, he lost interest on his \$7,000 sale

for two months which, at an annual rate of 6%, would amount to \$70. Consequently, Larry Dahler's out-of-pocket losses as a result of the Respondent's rejection of Swanson's rental application was \$240.

Based on the foregoing Findings of Fact, and the discussion in the attached Memorandum, the Bearing Examiner makes the following

CONCLUSIONS OF LAW

1. That the Department of Human Rights gave proper notice of the hearing in this matter; that the Hearing Examiner has jurisdiction of this matter pursuant to Minn. Stat. DQG WKDW WKH 'HSDUWPHQW RI Human Rights has fulfilled all relevant, substantive and procedural requirements of law or rule.

2. That the Complaint issued by the Commissioner in this matter was issued pursuant to Minn. Stat. 363.06 (1978).

3. That the Respondent rejected the application of Robert Swanson to rent a lot in restwood on the basis of Robert Swanson's sex and marital status contrary to Minn. Stat. 363.03, subd. 2(1) (a) (1976) .

4. That the respondent's alleged rejection of the Swanson application on the grounds that Swanson had a poor attitude, or on the grounds that Swanson was the non-custodial parent of three children, or on the grounds that rental of the Dahler lot to families with small children was against Restwood's policy because of its proximity to a drainage ditch were a mere pretext for the actual decision to deny rental on the grounds of Swanson's sex and marital status.

5. That as a result of Respondent's illegal discrimination against Robert Swanson, both Robert Swanson and Larry Dahler became aggrieved thereby; that Robert Swanson sustained actual damages as a result of Respondent's discrimination in the amount of \$1,758.77, and Larry Dahler sustained actual damages as a result of Respondent's illegal discrimination in the amount of \$240.00.

6. That the respondent should pay punitive damages to aggrieved party Robert Swanson in the amount of \$100, and to aggrieved party Larry Dahler in the amount of \$50.

7. That Robert Swanson's purchase of the Skyline was reasonable, was made in good faith, and was completed without unreasonable delay.

B. That Respondent's denial of the Swanson application was willful and

malicious.

pursuant to the foregoing Conclusions of Law, the Hearing Examiner makes the following:

ORDER

Pursuant to the authority granted in Minn. Stat. 363.071, subd. 2, IT IS HEREBY ORDERED:

(1) That the Respondent pay to Robert Swanson out-of-pocket damages in the amount of \$1,758.77, with interest at the rate of 6 percent per annum from April 4, 1980, plus \$100 in punitive damages.

(2) That the respondent pay to aggrieved party Larry Dahler \$240 in compensatory damages, with interest at the rate of 6 percent per annum from October 24, 1977, plus \$25 in punitive damages.

(3) That the respondent cease and desist from discriminating against applicants at Restwood on the basis of their sex or marital status.

Dated this 7 day of July, 19 81.

JON L. LUNDE
Hearing Examiner

MEMORANDUM

DISCRIMINATION

the testimony in this case was diametric, but three credible witnesses all testified that the respondent, Lyle Czech, admitted to them that Larry Swanson's application had been denied on the basis that he was a single male.

Denial of tenancy for that reason violates the Minnesota Human Rights Act.

Although the Respondent denied that the Swanson application had been rejected on those grounds and offered other reasons for its rejection, the

Hearing Examiner was not persuaded by the Respondent's denial and finds that it is more

likely than not that the alternative reasons for the rejection of the Swanson application which were given at different times by the Respondent were not

bona fide reasons for the rejection of the application, but a mere pretext for illegal discrimination. First, the reasons for the rejection given from time to

time by the respondent were inconsistent. At one point, rejection was based in part upon the failure of the Dahler mobile home to have proper

skirting. At other times, that failure was not mentioned, but Swanson's negative

attitude toward Park rules was advanced as the reason for discrimination, and at the hearing, respondent asserted a new ground for rejection on the basis that

the Dahler home was located too close to a drainage ditch in the Park and

parents with children should not be permitted to reside there. As to the last

reason, however, it was clearly shown at the hearing that parents with children

commonly resided in the area of the park where the Dahler home was located and

that there was a play area near the very drainage ditch Respondent expressed

concern with. The respondent's alleged concern with the safety of children

residing

near the drainage ditch is unpersuasive in view of the failure to advance that reason in 1977, and in view of the fact that children did reside in that area.

Furthermore, the mere fact that the Respondent raised that as a ground for refusal of the Swanson application renders his whole testimony suspect.

The alleged policy at Restwood precluding the rental to the owners of a single-wide mobile home, if the owners had more than two children, was also unpersuasive. That alleged policy was nowhere written down, was not enforced in all cases, even against renters whose children actually resided with them at Restwood, and was not shown to have ever been applied to the non-custodial parent of more than two children. Furthermore, the alleged policy was not enforced against existing renters, if they had additional children, and none of the leasing agreements or Park rules contained provisions to prevent the overcrowding concern raised by the Respondent. Furthermore, the reasonableness of a policy which would preclude the rental of space to a single Person who is the non-custodial parent of children who might never reside with them, renders the

bona fides of that policy highly questionable. It is also suspect because there was no showing that the alleged policy should be the same when dealing with a single person who has three non-custodial children (being a total of four possible occupants), or a married couple with two children (being a total occupancy of four individuals). Furthermore, while Mr. Zerba, the president of Mobilhome Minnesota was aware of a policy at Restwood, which precluded the rental of single-wide mobile homes to the parents of more than two children, he had never heard of such policy being enforced against non-custodial parents. In addition, the application form used by the Respondent, and the interview and application process followed by, his managers, was not designed to discover whether or not the applicants were non-custodial parents. On the contrary, the application form merely asked, "CHILDREN - NO." That very question is ambiguous as an individual might likely construe the question to mean the number of children who would be residing in the mobile home for which space is to be rented, and not the number of children an individual might have by a prior marriage who did not reside with the particular applicants). For all these reasons, the existence of a bona fide policy precluding the rental of a single-wide mobile home space to the non-custodial parent of more than two children is found to be unreliable and unpersuasive and advanced as a mere pretext for illegal discrimination against single males like Robert Swanson.

The applications received and approved by the Respondent during the two-year period from August 1, 1976 to August 31, 1978 were not persuasive evidence that Respondent did not have a policy against renting to certain single males. On the contrary, the living arrangements of most of these "single males" supports the credibility of Zerba's testimony that Respondent admitted he wanted to lease a family park. Zerba himself, who corroborated the testimony of Swanson and Dahler, was a persuasive and unbiased witness who had nothing to gain by falsifying his testimony.

Respondent attempted to show that the charging parties' complaints against him arose out of a mere misunderstanding as to the actual substance of his con-

versations with them. The evidence does not support such a misunderstanding because three different parties, as the result of separate conversations with him, each understood that the Swanson application had been denied because of his sex and marital status. It is hard to believe that three individuals, based on different conversations, could arrive at exactly the same understanding -of the reason for the rejection if that was not, in fact, the case. If there was a misunderstanding, it would have been clarified long ago. In addition, respondent argued that no ordinary persons would use the word "single male" when describing a single man or an unmarried man. However, on Mark John-son's application form (7/17/78), in handwriting other than the applicant, the very words " single male" appear.

REPRISAL

The Respondent's testimony concerning his enforcement of the State Building Code as it pertains to tie-downs was highly persuasive and made sense. The procedures followed are supported by notations on various application forms (Ex. A). For these reasons, it is concluded that respondent's requirements were bona fide and that no reprisal occurred as alleged by Dahler for purposes of Minn. Stat. 363.063, subd. 7(1) (1976).

DAMGES

Since an act of discrimination was committed, the aggrieved parties, Larry Dahler and Robert Swanson, are entitled to compensatory damages. While Dahler argued that all his costs of residing in the mobile home an additional two months should be repaid to him since he could have resided with his parents free during that period of time that kind of damage should not be allowed in this case. Dahler was perfectly free to move in with his parents at any time to avoid the expenses he incurred while residing in his mobile home an additional two months. He chose not to do so, and it certainly would not be within any reasonable person's anticipation or expectation to foresee the kinds of damage Larry Dahler has requested. However, Dahler did have two kinds of damage. First, he was required to pay rental on his lot in the amount of \$170 for the additional two months, and he lost interest on the \$7,000 he would have received as a result of the Swanson sale for two months, which is equivalent to an additional \$70. Most of these kinds of damages are reasonably foreseeable and actual damages sustained by Dahler and should be repaid to him with interest at 6%.

Robert Swanson also sustained compensatory damages when he was required, as a result of respondent's rejection of his application to locate a different mobile home. The mobile home he purchased was of comparable or equivalent value to the Dahler mobile home but cost an additional \$1300 and resulted in Swanson's payment of additional out-of-pocket expense totalling \$1,758.77; These additional expenses for a comparable mobile home directly resulted from the respondent's actions, were reasonably incurred and were reasonably foreseeable, and should be repaid to him with interest from April 4, 1980 at the rate of 6% per annum.

While respondent argued that Swanson established no losses because he failed to show the difference between the market value and the purchase price of the Dahler home, that is not the only measure of damages that can be utilized. In this case, Swanson seeks his costs of "cover", on the purchase of an

alternate mobile home, analogous to that permitted under Minn. Stat. 336.2-712 (1980). The costs of cover have been allowed in federal civil rights cases; See Miller et al v. Apartments and Homes of New Jersey, Inc; 8 equal Opportunity in Housing (P-H) par. 15.375 (1980), and should be awarded here to fulfill the purposes of the Act. There was no evidence that Swanson's actions in obtaining the second-mobile home were-not in good-faith or unreasonable. Since the home purchased, according to Zerba's expert testimony, was equivalent in value to that owned by Dahler the increased costs of obtaining the second home, resulting directly from Respondent's illegal act, should be awarded to him. It would defeat the purposes of the Act to narrowly limit Swanson's recovery to the contractual measure of damages suggested by Respondent where his action was more akin to a tort and where costs of cover are a recognized measure of damages in the sale of goods. wide margin for the awarding of damages is authorized under Minn Stat; 363.071, subd. 2 (1976) so that individuals discriminated against are placed in the same position they would have been in had no discrimination occurred.

J.L.L.

