

**STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION**

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rel., Barbara Smith, Jasmine Tierre Williams,
and Paris Monet Williams,¹
Claimants,

Case No. 398461

v.

HUD No. 050907438

COUNTRYSIDE TOWNHOUSES,
Respondent.

**OPINION AND
FINAL ORDER**

At a meeting of the Michigan Civil Rights Commission
Held in Mt. Pleasant, Michigan on the 24th day of March 2014

In accordance with Michigan Civil Rights Commission Rule 37.12; Mich Admin Code R. 37.12, a hearing referee heard proofs and arguments in this matter, during two days of hearing held between October 29, 2013 and October 30, 2013. The hearing referee subsequently issued Findings of Fact, Conclusions of Law and Recommendations (Recommendation), dated December 27, 2014, dismissing the underlying complaint.

The Michigan Civil Rights Commission (Commission) considered exceptions filed by both parties and heard oral arguments on March 24, 2014. Following oral arguments, in an Opinion prepared by Commissioner Linda Lee Tarver, the Commission adopted the hearing referee's Recommendation as to the dismissal of claimant's disability-disparate impact, disability-disparate treatment, disability-failure to accommodate, and age discrimination-disparate impact claims. However, the Commission rejected and reversed the hearing referee's Recommendation as to

¹The original complaint filed by Claimant included claims by her two adult daughters, Jasmine Tierre Williams and Paris Monet Williams. However, they failed to appear for the October 29, 2013 hearing and their claims were dismissed by stipulation of the parties. See Hearing Transcript, pages 12-15.

the dismissal of claimant's age discrimination-disparate treatment claim. Specifically, the Commission finds that Respondent's "two adults only per unit" occupancy policy violates the Michigan Elliott-Larsen Civil Rights Act (ELCRA) and Title VII of the Civil Rights Act of 1964 by discriminating against Claimant on the basis of her age or the age of persons residing with her. Thus, for the following reasons, the Commission affirms, in part, and reverses, in part, the hearing referee's Recommendation of December 27, 2013:

Background and Procedural History

The Commission adopts and incorporates by reference the hearing referee's Background and Procedural History, as set forth in the Recommendation, pages 2-16.

Statement of Issues Presented

The Commission adopts and incorporates by reference the hearing officer's Statement of Issues Presented, as set forth in the Recommendation, pages 16-17.

Findings of Fact

The Commission adopts and incorporates by reference the Findings of Fact (Nos. 1-42), as set forth in the Recommendation, pages 17-18.

Conclusions of Law

I. Disability Discrimination

A. Disability - Disparate Impact

The Commission adopts and incorporates by reference the dismissal of Claimant's disability-disparate impact claim as set forth in the Recommendation, pages 22-26.

B. Disability - Disparate Treatment

The Commission adopts and incorporates by reference the dismissal of Claimant's disability-disparate treatment claim as set forth in the Recommendation, pages 27-28.

C. Failure to Make Reasonable Accommodations

The Commission adopts and incorporates by reference the dismissal of Claimant's disability-failure to make a reasonable accommodation claim as set forth in the Recommendation, pages 29-34.

II. Age Discrimination

A. Age Discrimination - Disparate Impact

The Commission adopts and incorporates by reference the dismissal of Claimant's age discrimination-disparate impact claim as set forth in the Recommendation, pages 38-40.

B. Age Discrimination - Disparate Treatment

The Commission expressly rejects and reverses the hearing referee's dismissal of claimant's age discrimination-disparate treatment claim as set forth in the Recommendation, pages 36-38. In support of its ruling the Commission states as follows:

The ELCRA provides that

A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of religion, race, color, national origin, age, sex, familial status, or marital status of a person **or a person residing with that person:**

- (a) Refuse to engage in a real estate transaction with a person.
- (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction. MCL 37.2502. (Emphasis added)

Here, Respondent has a maximum occupancy policy of two adults per unit, regardless of how many bedrooms are in, or the square footage of the unit.

In dismissing Claimant's age discrimination-disparate treatment claim, the hearing officer found that

[I]eaving aside immaterial issues involving familial status, multi-generation families, and the special nature of families with minor children, the MDCR cannot establish its prima facie case because Claimant was not treated differently than any other adult on the basis of her age. Whether she was older or younger, her application still would have been denied as the occupancy policy applies equally to all adults, regardless of their age. (R 37-38)

Applying a shifting burden analysis under *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; L Ed2d 668 (1973), the hearing referee concluded that claimant had failed to establish a prima facie case of discrimination based on age, by inference or through direct evidence.

The ELCRA is a remedial statute, intended to provide a remedy for many types of discrimination. Courts have a policy of construing remedial legislation broadly. *Dep't of Civil Rights ex rel Parks v General Motors Corp*, 412 Mich. 610, 650; 317 NW2d 16 (1982). See *In re School Dist. No. 6*, 284 Mich. 132, 144; 278 NW 792 (1938). See also *White v Motor Wheel Corp*, 64 Mich App 225, 230-231; 236 NW2d 709 (1975).

The issue before the Commission is one of first impression under Michigan jurisprudence. While the Michigan Supreme Court, in *Dep't of Civil Rights v Beznos Corp*, 421 Mich 110; 365 NW 2d 82 (1984), has addressed issues related to the differential treatment of children who reside with a parent or guardian in a rental setting, there is no similar case law addressing the differential treatment of adults residing with a parent in the same context.

In *Dep't of Civil Rights v Beznos Corp*, 421 Mich 110; 365 NW2d 82 (1984), the court found that the age discrimination provisions of the ELCRA did not pertain to the differential treatment of children who reside with their parents in apartment complexes. *Id.* at 121-22. The court held that a landlord's practice of restricting families with children to certain designated buildings within an apartment complex was permissible. The court further held that the ELCRA does not "require identical treatment of children and adults in every situation" and that differential treatment of minors might be permissible where such treatment is reasonably necessitated by the "special nature and characteristics" of children. *Id.* at 121.

The court in *Beznos, supra*, noted that the age discrimination provisions of the ELCRA are supposed to be interpreted through "practical rational reasoning" and that "such reasoning recognizes that children and adults are not the same for all purposes and that what might otherwise be unlawful age discrimination is permitted by law where it represents a reasonable method of accommodating other common law, statutory, or constitutional duties with the rights of families with children to nondiscriminatory treatment in access to rental housing." *Id.* at 421.

The role of the Commission in deciding this issue is not to make law, but rather, is to apply the existing statute as written. In the instant case, the hearing referee ruled that Respondent's two adults per unit occupancy policy is not facially discriminatory based on age. We disagree. It is clear that Respondent's occupancy policy denies rental applications based on the age of persons residing with that applicant, in this case Claimant's two adult daughters. The Commission finds that such an occupancy policy is discriminatory on its face and constitutes direct

evidence of age discrimination. The mere fact that this occupancy policy applies to all adults equally does not negate the fact that it discriminates on the basis of age. The same would be true of a policy which discriminates against women, for example. The fact that it discriminates against all women equally does not render the underlying policy non-discriminatory.

Assuming for the sake of argument that the Commission found that Respondent's adult occupancy policy was not discriminatory on its face, but merely established an inference of age discrimination, the Commission finds that Respondent has failed to articulate a legitimate non-discriminatory reason for its occupancy policy, under a *McDonnell Douglas* shifting burden analysis.

Respondent provides the following justifications for its two adults per unit occupancy policy: parking issues, residential tranquility and stability, and to lessen damage to rental units. As for the parking issue, the Commission finds that this situation could be addressed by simply limiting the number of parking spaces per unit to two. Additionally, the issue does not typically arise with adulthood (age 18 or over) but rather when a resident attains the driving age of sixteen. As such, Respondent's adult occupancy policy would appear to be unrelated to any special characteristics of adulthood. Thus, the Commission finds that this policy does not address any legitimate concerns related to parking.

As for residential tranquility and stability, the Commission finds the Respondent failed to present any evidence which would suggest that these behaviors are natural characteristics of adults or adulthood. In fact, the Michigan Supreme Court in *Beznos, supra*, found that the unique characteristics of children (presumably their tendency to be noisier and to disturb the tranquility of apartment living) permits landlords to treat them differently from adults (i.e. persons over the age of 18). Implicit in the court's decision is that similar restrictions placed on adults, in terms of limiting them to certain apartments within the complex, would be impermissible age discrimination. Moreover, Respondent's grandfather clause waives its two adult per unit occupancy policy and, thus, contradicts their 'tranquility and stability' argument."

Finally, in reference to the issue of wear and tear to a rental unit, the Commission finds there are already rental practices in place to address this issue. Typically, this issue is addressed on the front side (through the rental agreement) by adjustments to the rental rate, for instance where an applicant may have a pet or other situation which might add to the wear and tear of a unit. On the back side, this issue is addressed by the withholding of the rental security deposit. Therefore, the Commission finds that wear and tear concerns need not be based on the age of the occupants of a rental unit.

This ruling by the Commission is not intended to suggest that apartment complexes can never adopt occupancy standards. However, those occupancy policies should not be based on age or any other protected category. For instance, it may be permissible for an apartment complex to limit occupancy based on the number of persons per bedroom or the square footage of the unit or sleeping areas.

Absent a lack of specific characteristics, both adults and children enjoy protection against age discrimination in rental agreements. In *Cheeseman v American Multi-Cinema, Inc*, 108 Mich App 428; 310 NW2d 408 (1981), the court found that children could be treated differently from adults where there is a justification for doing so. *Id* at 441.

In the instant case, we are dealing with the differential treatment of adults, not the differential treatment of children and adults. This fact is made clear when you consider that Respondent has a grandfather clause that waives its “two adults only per unit” occupancy policy for residents who were already in the complex before the policy took effect. In other words, but for the timing of their respective rental applications, one family, with adult children, might be granted occupancy while another identical family would not. The Commission finds there is simply no justification for such a distinction under the law, and that similarly situated adults must be treated equally in rental transactions regardless of age.

Damages and Remedies

A. Economic Damages

The Commission adopts by reference the denial of economic damages to Claimant in the amount of \$15,720 as set forth in the Recommendation, page 43.

B. Noneconomic Damages

The Commission expressly rejects and reverses the hearing officer’s denial of noneconomic damages in this case as set forth in the Recommendation, page 43. Additionally, the Commission rejects and reverses the hearing officer’s alternative noneconomic award to Claimant in the amount of \$65,000.

As set forth above, the Commission finds Respondent’s two adults per unit occupancy policy in violation of the ELCRA and as such, finds that Claimant is entitled to noneconomic damages for mental and emotional distress. Based on the administrative record, it is clear that Claimant experienced distress, anger, and frustration due to Respondent’s occupancy policy (Tr 36, 94, 95 and 96). In view of

this fact, the Commission finds that Claimant is entitled nominal damages for mental and emotional distress in the amount of \$5,000.

CONCLUSIONS OF LAW

The Commission finds that Respondent's "two adults only per unit" occupancy policy violates the ELCRA and Title VII of the Civil Rights Act of 1964, and that Claimant is entitled to a nominal award of damages for mental and emotional distress in the amount of \$5,000.

IT IS HEREBY ORDERED that:

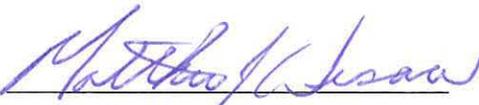
- A. Respondent shall cease and desist from enforcing its "two adults only per unit" occupancy policy at any of its housing complexes, including CountrySide Townhouses Complex.
- B. Respondent shall remove its "two adults only per unit" age restrictive occupancy policy from all television, radio, billboards, websites, leaflets, advertisements, leases and employee training materials.
- C. Respondent, its owners, officials, officers, agents, employees, and all persons in active concert or participation with respondent in the performance of real estate transactions, will cease and desist from any ongoing act or practice that discriminates against any applicant on the basis of age in violation of Article 5 of the Elliott-Larsen Civil Rights Act, MCL 37.2502.
- D. Respondent shall place in any and all advertisements the phrase "Equal Housing Opportunity." Respondent shall also publicly display the HUD "Equal Housing Opportunity" poster and the Michigan Department of Civil Rights poster in its place of business.
- E. Respondent shall include the following phrase in the standard rental application and any lease used by CountrySide Townhouses in bold print equal to the text of the document:

We are an equal housing opportunity provider. We do not discriminate on the basis of race, color, sex, national origin, religion, disability, familial status (having children under age 18), marital status or age.

- F. Claimant is awarded nominal damages of \$5,000 for mental/emotional distress.
- G. Statutory interest shall be awarded from the date of the filing of this civil rights complaint on March 17, 2009 until the judgment is satisfied.

Michigan Civil Rights Commission

Date: March 24, 2014



Matthew J. Wesaw, Director

NOTICE OF RIGHT TO APPEAL

You are hereby notified of your right to appeal within thirty (30) days to the Circuit Court of the State of Michigan having jurisdiction as provided by law. MCLA 37.2606