



City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 3rd Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Ofelia Montelongo
Complainant,
v.

Hassan Azarpira
Respondents.

Case No.: 09-H-23

Date of Ruling: March 16, 2011

Date Mailed: March 30, 2011

TO:

Salvador Lopez
Legal Assistance Foundation
of Metropolitan Chicago
1279 N. Milwaukee Ave., Suite 407
Chicago, IL 60642

Hassan Azarpira
Peachtree Nursery
3811 W. Fullerton
Chicago, IL 60647

FINAL ORDER FINDING LIABILITY

YOU ARE HEREBY NOTIFIED that, on March 16, 2011, the Chicago Commission on Human Relations issued a ruling in favor of Complainant in the above-captioned matter, finding that Respondent violated the Chicago Fair Housing Ordinance. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, the Commission hereby remands the case to the hearing officer for a further recommended ruling as to the remedies to be ordered.

Pursuant to Commission Regulations 100(15) and 250.150, a party may obtain review of this order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law. However, because further proceeding concerning relief are now pending, such a petition cannot be filed until after issuance of the Final Order concerning relief, including any Final Order determining the amount of attorney fees.

CHICAGO COMMISSION ON HUMAN RELATIONS
Dana V. Starks, Chair and Commissioner

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FINAL RULING ON LIABILITY AND RELIEF

I. PROCEDURAL HISTORY

Complainant Ofelia Montelongo filed a discrimination Complaint at the Commission on Human Relations on June 24, 2009, alleging that Respondent Hassan Azarpira refused to rent an apartment to her because of her son's disability and her parental status, in violation of the Chicago Fair Housing Ordinance, Ch. 5-8 of the Chicago Municipal Code.

Pursuant to Commission Regulation 210.210, the Commission notified the named Respondent of the Complaint and of the requirements to file and serve a response. Azarpira filed a Response to Complaint on October 13, 2009. After completing its investigation, the Commission mailed to all parties on April 27, 2010, an Order Finding Substantial Evidence of disability discrimination. The Order stated that the Commission found no substantial evidence of parental status discrimination. An Order Setting Settlement Conference for June 3, 2010, was also mailed to all parties on April 27, 2010. However, due to an untimely and improperly filed continuance request by Montelongo, the Commission mailed an Order Canceling Settlement Conference and Denying Continuance to all parties on June 1, 2010.

The Commission then issued an Order Appointing Hearing Officer and Commencing Hearing Process on June 8, 2010, with a pre-hearing conference scheduled for August 3, 2010, at 9:30 a.m. Azarpira did not appear for the pre-hearing conference; therefore, the hearing officer issued a Notice of Possible Default/Dismissal and Other Sanctions for Failure to Attend Pre-Hearing Conference and Order Setting Administrative Hearing. This order set the administrative hearing for October 14, 2010. Azarpira did not file an explanation for failing to appear at the pre-hearing conference. Complainant's Motion to Extend Deadline of Pre-Hearing Memorandum until October 3, 2010, was granted. The hearing was held as scheduled on October 14, 2010.

Because Azarpira failed to appear for the administrative hearing, after also failing to appear for the pre-hearing conference, the hearing proceeded as a default with Complainant being allowed to present her *prima facie* case and her evidence establishing entitlement to relief. See Regs. 270.398 and 235.320.

In a Recommended Ruling issued on January 13, 2011, the hearing officer recommended a finding that Complainant has not met her burden to prove a *prima facie* case of disability discrimination. Complainant did not file objections to this recommended ruling. However, on review of this recommendation and the evidence of record, the Commission finds that

Complainant presented sufficient credible evidence to establish her *prima facie* case, for the reasons explained below. The case will be remanded to the hearing officer for a recommended ruling on the relief to be awarded.

II. APPLICABLE LEGAL STANDARDS

Section 5-8-030 of the Chicago Fair Housing Ordinance states:

It shall be an unfair housing practice and unlawful for any owner...having the right to sell, rent, lease, sublease, or establish rules or policies for any housing accommodation, within the City of Chicago, or any agent of any of these, or any real estate broker licensed as such...(C) to refuse to sell, lease or rent, any real estate for residential purposes within the City of Chicago because of the race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income of the proposed buyer or renter.

It is well-established that indirect discrimination violates the Chicago Fair Housing Ordinance. That is, Complainant can prevail if she proves she was denied or restricted in her access to housing because of the protected class of another person, in this instance the disability of her son Ivan, who was to occupy the housing with her. See, e.g., *Gott v. Novak*, CCHR No. 02-H-1/2 (Aug. 21, 2002).

To prevail, the Commission requires Complainant Montelongo to present evidence at the hearing to prove her *prima facie* case. *Bell v. 7-Eleven Convenience Store*, CCHR No. 97-PA-68/70/72 (July 28, 1999). In light of the default, Respondent Azarpira is deemed to have “admitted all of the facts alleged in the Complaint and to have waived [their] defense(s) to the allegations, including defenses concerning the Complaint’s sufficiency.” Reg. 215.240; *Carroll v. Riley*, CCHR No. 03-E-172 (Nov. 17, 2004); *Horn v. A-Aero 24 Hour Locksmith et. al.*, CCHR No. 99-PA-00 (July 19, 2000); *Soria v. Kern*, CCHR No. 95-H-113 (July 18, 1996). Nevertheless, the Commission may order relief only if Complainant establishes a *prima facie* case of the claimed ordinance violation. *Barnett v. T.E.M.R. Jackson Rental et al.*, CCHR No. 97-H-31 (Dec. 6, 2000); *Puryear v. Hank*, CCHR No. 98-H-139 (Sept. 15, 1999); *Huff v. American Mgmt. & Rental Svcs.*, CCHR No. 97-H-187 (Jan. 20, 1999) Even when there is a defaulted respondent, the Commission has an independent obligation to assure that it imposes liability and damages only when the record demonstrates that an ordinance violation occurred. *Wiles v. The Woodlawn Organization et al.*, CCHR No. 96-H-1 (Mar. 17, 1999).

Complainant has not alleged or provided direct evidence of discriminatory intent. To prove a *prima facie* case of failure to rent a housing unit based on disability by indirect or circumstantial evidence, there must first be evidence showing that Complainant had a disability within the meaning of the CFHO, that she applied for and was qualified to rent the housing unit, that she was rejected, and that the unit remained available to rent thereafter. *Castro v. Georgeopoulos et al.*, CCHR No. 92-FHO-6-5591; *Jones v. Shaheed*, CCHR No. 00-H-82 (Oct. 24, 2003). In *Jones v. Shaheed*, the Commission further noted that, in order for a complainant to prevail, a respondent must know or at least perceive that the complainant has a disability, although it is not necessary for the respondent to know the particulars of the disability.

The Commission reviews a hearing officer’s proposed findings of fact pursuant to Section 2-120-510(l) of the Chicago Municipal Code, which provides in pertinent part: “The commission shall adopt the findings of fact recommended by a hearing officer...if the recommended findings are not contrary to the evidence presented at the hearing.” This standard

of review takes into account that the hearing officer has had the opportunity to observe the testimony and demeanor of witnesses. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); see also *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997). The Commission thus will not re-weigh a hearing officer's recommendation as to witness credibility unless it is against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996); *Wiles v. The Woodlawn Organization et al.*, *supra*.

III. FINDINGS OF FACT

The Commission accepts and adopts the following findings of fact as recommended by the hearing officer based on the evidence presented at the administrative hearing:

1. Ofelia Montelongo has one minor child, Ivan Montelongo, who has been diagnosed with autism. (Tr. 7)
2. Since July 2009, Montelongo and her son, Ivan, live at 2630 W. Division. (Tr. 8)
3. Prior to moving to the apartment on Division, Montelongo saw a classified advertisement for an apartment for rent on Fullerton and Avers. Montelongo called the number in the ad to inquire about the apartment on Tuesday, June 9, 2009, and spoke with Hassan Azarpira. On Wednesday, June 10, 2009, Azarpira scheduled an appointment for a woman named Elvia to show Montelongo the apartment on Thursday, June 11, 2009. (Tr. 8-11)
4. Elvia showed the apartment to Montelongo and her son, Ivan, and Montelongo expressed that she wanted to rent the apartment on June 11, 2009. In Montelongo's presence, Elvia contacted the owner, Azarpira, to indicate Montelongo liked the apartment. (Tr. 12-13)
5. Immediately following showing the apartment, Elvia tendered a handwritten and signed document to Montelongo indicating the amount for rent and the security deposit, Elvia's contact information, and information regarding the day care center, Peachtree Nursery. Elvia indicated that upon payment of the deposit and the first month's rent they could sign the lease the next day. Montelongo understood that there was an agreement for her to rent the apartment. (Tr. 14-16, 27)
6. During the meeting with Elvia in the day care center, Ivan climbed on one of the table games and began pointing in various directions, and refused to get down upon being directed by Montelongo. During this time, Montelongo observed Elvia appearing to be scared, upset or angry and asking to get Ivan down off of the table. (Tr. 17-19)
7. Montelongo was unable to sign the lease the following day but called Elvia on Monday, June 15, 2009. Elvia told Montelongo the apartment had already been rented and hung up the phone abruptly. (Tr. 21-22)
8. Upon finding out the apartment had been denied to his mother, Cesar Montelongo, Ofelia Montelongo's older son, called the same number in the classified advertisement to inquire about the apartment. Cesar Montelongo was told¹ that the apartment was still available and an appointment was scheduled for him to look at the apartment. (Tr. 45-47)
9. Montelongo took off two weeks from work to find another apartment. Montelongo

¹ Cesar Montelongo testified that he "spoke to the man who said that he was renting the apartment, but I cannot remember his name." (Tr. 46).

wanted an apartment in the same area where she was living, but was unable to find one close to the same rent amount (\$690) as Azarpira's apartment. Montelongo ended up moving to an apartment that was 30 minutes away via bus. (Tr. 29, 32-33)

10. A woman named Sylvia who lived in the area of Azarpira's apartment agreed to care for Ivan for \$50 or \$60 per week, but because Montelongo could not find an apartment in the area, Sylvia could not care for him. Montelongo could not find child care for Ivan in a similar price range, only finding places charging \$10 to \$25 per hour. While on summer break, the Boys and Girls Club only allowed Ivan to stay in the program for six days while observing his behavior. As a result, Montelongo had to care for him during the summer and could not look for a job while doing so. (Tr. 34-35, 37-38)
11. Montelongo's current apartment is smaller than Azarpira's apartment and Montelongo does not feel safe in her new neighborhood, and she does not allow Ivan to go outdoors like she did in her previous neighborhood. (Tr. 39-40)
12. Montelongo's salary in June 2009 was \$18,000 per year or \$750 per week. (Tr. 29)
13. The hearing officer assessed Montelongo's testimony as credible, as she testified with clarity, specificity, and consistently with the allegations in her Complaint. She explained that Montelongo appeared to be confident in her testimony and was able to provide dates and substance of specific conversations leading to her belief that there was an agreement for her to rent the apartment. The hearing officer also found the testimony of Cesar Montelongo to be credible, reliable, and uncontradicted.

IV. CONCLUSIONS OF LAW AND DISCUSSION

Under the Chicago Human Rights Ordinance and the Chicago Fair Housing Ordinance, "disability" is defined as:

- (i) a determinable physical or mental characteristic which may result from disease, injury, congenital condition of birth or functional disorder...; or
- (ii) the history of such a characteristic; or
- (iii) the perception of such a characteristic by the person complained against.

§2-160-020(c), Chicago Muni. Code and CCHR Reg. 100(11).

Montelongo testified that her 15-year-old son, Ivan, is autistic and attends special education classes. (Tr. 7-8) Responding to a newspaper classified advertisement, she contacted Azarpira and scheduled an appointment to see an apartment located at Fullerton and Avers. (Tr. 8, 11) Upon meeting with a woman named Elvia, who showed her the apartment, she expressed interest in renting the apartment. (Tr. 13) Elvia contacted Azarpira via telephone to indicate Montelongo was interested in the apartment. (Tr. 13) Elvia provided Montelongo with a handwritten, signed document indicating the security deposit and rent amount to be paid upon signing the lease. (Complainant's Ex. 2, Tr. 16)

Ivan accompanied Montelongo to view the apartment and, while he was fine during the tour of the apartment, when they went to the day care center located on the first floor, Ivan climbed onto one of the table games, began pointing around the room, and refused to get down at Montelongo's direction. (Tr. 17-20) Montelongo testified that Elvia appeared scared and upset

and instructed Montelongo to get Ivan off of the table. (Tr. 17-18) Montelongo contacted Elvia the following Monday to sign the lease and was told the apartment had already been rented to someone else. (Tr. 21-23) Cesar Montelongo testified that after his mother was denied the apartment, he responded to the same classified advertisement (Complainant's Exhibit 1) and was told the apartment was still available. He scheduled an appointment to see the apartment. (Tr. 46-47)

The hearing officer found that this testimony supports Montelongo's assertion that Azarpira reneged on a commitment to rent the apartment to her, and the Commission agrees. The key issue is whether Montelongo's testimony is sufficient to support an inference that Respondent knew or perceived Ivan to have a disability as defined under the CHRO. As noted by the hearing officer, Montelongo presented no evidence in either her Complaint or her hearing testimony that she told Elvia (or Azarpira) that Ivan is autistic or has any other disability.

The Board of Commissioners has determined that Montelongo's testimony at the hearing is nevertheless sufficient to support an inference of knowledge or perception of disability by Respondent. As a result, it respectfully declines to accept the hearing officer's recommendation on this element of Complainant's case and instead finds that Montelongo has proved her *prima facie* case of disability discrimination.

Because of the default, Respondent is deemed to have admitted the allegations of the Complaint and to have waived any defenses to the allegations. CCHR Reg. 235.320. Nevertheless, one effect of a default is that inferences from the evidence presented by the complainant may be resolved against the defaulted respondent. Here, Respondent entered a general written response to the Complaint which admitted that the apartment was still available on June 15, 2009, while denying any discrimination against Montelongo. Respondent had notice and the opportunity to present a defense at the administrative hearing in this case, but failed to take advantage of that opportunity.

The critical evidence is Complainant's testimony about Ivan's behavior after the showing of the apartment and about Elvia's reaction to it:

Q: And after—after Elvia handed you that document, did Ivan do anything?

A: Yes.

Q: Could you please tell me what he did or what happened?

A: He climbed on one of the games at the day care.

Q: Can you describe this game to me?

A: He climbed onto something like a stair, like round and looks like a table [Spanish interpreter clarifies use of the word "table"]

Q: How high off the ground was this table?

A: It was like a table, I'm not sure but it was like—the measuring could be like a 10.

Q: Like a what?

A: Number ten.

Q: Can you give me an estimate how high off the ground it was?

A: Like two feet.

Q: And what was—how did you notice that Ivan was on top of the table?

A: When—when I saw that Elvia was really scared.

Q: Did she tell you anything?

A: Yes.

Q: What did she say?

A: To put Ivan down from that game or that table.

Q: Can you tell me how she sounded when she told you this?

A: She was like scared and upset or angry.

Q: Did she notice Ivan on top of the table first or did you?

A: She did.

Q: And when you saw Ivan, what was he doing on the table?

A: He was like—he was like pointing at things.

Q: Can you demonstrate what he was doing, please?

A: He was standing up, pointing at things with his finger. (Indicating.)

Mr. Lopez:² I would like the record to reflect that Miss Montelongo raised her right hand and extended index finger pointing several times around the room.

Hearing Officer Stratton: So noted....

Q: Was he standing or sitting?

A: Standing.

Q: About how tall is Ivan?

A: Like five, six.

Q: What did you do after you saw him on the table?

A: I asked him to—to, you know, to get down, just to go down.

Q: What did Ivan do?

A: He said no.

Q: How many times did you ask him to get down?

A: Like three.

Q: And did he listen?

A: Yes, he did, but he didn't pay attention.

Q: Could you see Elvia at this time?

A: Yes, Hmm-hmm.

Q: And what was she doing or how did she look at this time?

A: Like scared.

Q: How did you eventually get Ivan down?

A: I was not able to pull him down.

Q: Did he come down eventually?

A: Yes.

Q: How?

A: When I said that I was leaving there, that he was going to stay there, that's when he came down.

Q: Did he get down while you were still inside the building or after you had walked out?

A: I was outside when I realized that he was down already.

Q: Did you realize that because he came outside?

A: Yes.

Q: Did you see Elvia again that day?

A: No.

(Tr. 16-20) This testimony describes highly unusual and abnormal behavior of a 15-year-old child who had just accompanied his mother on an apartment showing without incident. Neither his mother nor Elvia were able to persuade him to get off the game table he had climbed onto; he came down only after his mother left the day care center. Elvia's reaction was described as scared, upset, and angry. The Commission finds this evidence sufficient to support a further finding that it became apparent to Elvia that Ivan had a mental disability.

² Complainant's attorney conducting the questioning.

The Commission recognizes that it reached a different result in *Bosh v. Continental Casualty Co. et al.*, CCHR No. 92-E-83 (Apr. 19, 1995), an employment discrimination case under the Chicago Human Rights Ordinance (“CHRO”) which was cited by the hearing officer. In *Bosh*, the complainant attempted to prove that his mental disability was known or perceived through observations of his supervisors. In ruling that those respondents did not have knowledge or perception of the complainant’s disability, the Commission stated, “To hold that, in the absence of direct notice of mental retardation, supervisors who recognize some limitations in an employee’s aptitude, self-attitude and adaptability know or perceive that he is legally disabled ignores the CHRO definition of a disability: a determinable mental characteristic.” *Bosh*, however, was not in a default posture. The Commission made its determination in *Bosh* based on evaluation of evidence received from both sides at the administrative hearing. In the instant case, the evidence of Ivan’s highly unusual behavior for someone his age and Elvia’s strong reaction to it was stark and uncontroverted. In the Commission’s view, Elvia by her reaction communicated that she understood Ivan’s conduct as beyond a normal range of teenage behavior and a manifestation of a mental disability, whether or not she (or Azarpira) specifically understood the behavior to be the product of autism.

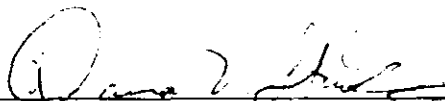
In addition, Complainant has sufficiently established through evidence and reasonable inferences that Respondent Azarpira acted through Elvia as his authorized agent in extending and then withdrawing an offer to rent the advertised apartment to Montelongo. The record shows that Azarpira owned the property in question and was an active participant in the rental process Montelongo and her son Cesar experienced. It is well-recognized that an agency relationship may be inferred from facts and circumstances. *Toledo v. Brancato*, CCHR No. 95-H-122 (July 9, 1997); see also *Warren & Elbert v. Lofton & Lofton Mgmt. d/b/a McDonald’s, et al.*, CCHR No. 07-P-62/63/92 (July 15, 2009).

Accordingly, Complainant has proved all the necessary elements of her *prima facie* case of disability discrimination, and so is entitled to a finding of liability and orders granting appropriate relief.

V. CONCLUSION

The Board of Commissioners finds Respondent Hassan Azarpira liable for disability discrimination in violation of the Chicago Fair Housing Ordinance. Pursuant to §2-120-510(l), Chicago Muni. Code, and CCHR Reg. 240.620(a), the Commission remands the case to the hearing officer for a further recommended ruling as to the remedies to be ordered, based on the hearing record including the evidence received at the administrative hearing.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Dana V. Starks, Chair and Commissioner
Entered: March 16, 2011