



**BEFORE THE
MISSOURI COMMISSION ON HUMAN RIGHTS
STATE OF MISSOURI**

STATE OF MISSOURI ex rel.)
JACQUELINE AND SCOTT)
HENDERSON,)
 Petitioners,)
 v.)
))
))
LINDA VERMETT,)
SALLY DICKHERBER, AND)
VILLA ROMA APARTMENTS,)

MCHR Case Number: H-03/10-03337
AHC Case Number: 11-0002 HRC

Respondents.

DECISION AND ORDER

After reviewing the record in the above-styled case, the Commission Panel adopts the Hearing Examiner's Findings of Fact and Conclusions of Law and issues the following Decision and Order.

IT IS HEREBY ORDERED:

- 1. Respondents violated §213.040 RSMo. by discriminating against Complainants Jacqueline and Scott Henderson by refusing to rent them an apartment because of Jacqueline Henderson's disability.**
- 2. Respondents shall pay to Complainants the sum of \$2,000 in actual damages for emotional distress and humiliation and \$3,000 in actual damages for deprivation of their civil rights.**
- 3. Respondents shall pay to the Missouri Commission on Human Rights (MCHR) a civil penalty of \$2,000 to vindicate the public interest.**
- 4. Respondents shall cease and desist from further discriminatory practices.**

Jennifer Placzek 8-20-14
Date
Jennifer Placzek
Commissioner
Agree
Disagree

Melody A. Smith 9/8/2014
Date
Melody Smith
Commissioner
Agree
Disagree

Michael Dierkes 9/14/14
Date
Michael Dierkes
Presiding Commissioner
Agree
Disagree

Before the
Commission on Human Rights
State of Missouri



STATE EX REL. JACQUELINE AND
SCOTT HENDERSON,

Petitioner,

vs.

LINDA VERMETT, SALLY DICKHERBER,
AND VILLA ROMA APARTMENTS,

Respondents.

No. 11-0002 HRC

RECOMMENDED DECISION

The Administrative Hearing Commission ("the Hearing Examiner") recommends that the Missouri Commission on Human Rights ("MCHR") order Linda Vermett, Sally Dickherber, and Villa Roma Apartments (collectively "Villa Roma") to pay Jacqueline and Scott Henderson ("the Hendersons") \$3,000 in actual damages for deprivation of civil rights and \$2,000 in actual damages for emotional distress and humiliation. Additionally, the Hearing Examiner recommends that Villa Roma pay a civil penalty of \$2,000.

Procedure

The Hendersons filed a complaint with MCHR on April 2, 2010. The Attorney General, on behalf of the MCHR, filed an amended complaint before us on February 9, 2012. The Hearing Examiner convened a hearing on the amended complaint on July 6, 2012. Vanessa Howard Ellis, Assistant Attorney General, represented the MCHR. Aaron M. Staebell

represented Villa Roma. The cause became ready for our consideration on November 8, 2012, the date the last written argument was filed.

Findings of Fact

Background

1. The Hendersons are natural persons protected by Chapter 213, RSMo.
2. At all times relevant to these findings, the Hendersons were a married couple.
3. In 1994, Jacqueline Henderson ("J. Henderson") sustained a spinal cord injury that resulted in lower body paralysis and a permanent inability to walk. At the times relevant to this case, J. Henderson was in a wheelchair.
4. In addition to the loss of her ability to walk, the injury in 1994 created several limitations to major activities in her daily life.
5. J. Henderson's paralysis and related limitations meet the definition of "disability."¹ She was disabled at all times relevant to these findings.
6. In early 2010, the Hendersons searched for an apartment to rent closer to J. Henderson's place of employment and Scott Henderson's ("S. Henderson's") school.
7. In February 2010, S. Henderson visited Villa Roma and determined that it was an apartment that could potentially accommodate J. Henderson's disability.

The February 10, 2010 visit

8. The Hendersons visited Villa Roma on February 10, 2010.
9. The Hendersons met with Linda Vermett ("Vermett"), manager of Villa Roma.
10. Vermett showed the Hendersons the Villa Roma two-bedroom display apartment because no one-bedroom apartments were available on the first floor, and a two-bedroom apartment would become available in April 2010.

¹ Section 213.010(4). Statutory references are to RSMo 2000 unless otherwise noted.

11. The two-bedroom apartment that would become available in April 2010 was unit 1915C, located in Building 1915. The existing lease on this unit was to end on March 31, 2010. Unit 1915C is an accessible ground-floor apartment.

12. Vermett accompanied the Hendersons to the exterior of Building 1915, which involved moving through the interior breezeway of the building, which contained the office/display unit. J. Henderson was able to easily move through the display unit with her wheelchair.

13. Vermett opened the security door to Building 1915 and allowed S. Henderson to lift J. Henderson over the one-step threshold into the building.

14. This threshold was between three and four inches high.

15. Vermett explained that she could not let the Hendersons into unit 1915C because it had not been cleaned.

16. There was another unit in Building 1883. However, this unit required the use of stairs, so the Hendersons did not view this unit.

17. The Hendersons informed Vermett they needed a ramp to be built in order to access the security door at Building 1915.

18. Vermett told the Hendersons she would need to speak to the owner.

The February 16, 2010 visit

19. The Hendersons again visited Villa Roma on February 16, 2010.

20. During this visit, the Hendersons signed a lease application, paid a \$25 application fee, and paid a \$100 security deposit.

21. The Hendersons were under the belief that they were putting a deposit down for Unit 1915C, which is an accessible ground-floor apartment.

22. After the lease application and security deposit had been paid, Vermett told the Hendersons that it would not be possible to build the ramp for Building 1915. This made it impractical for the Henderson to rent Unit 1915C. This, in effect, was a refusal to rent to the Hendersons.

23. Vermett's statement regarding not building a ramp also led to a heated exchange between Vermett and the Hendersons that resulted in the Hendersons being shocked, angry, and humiliated. This changed their immediate plans of dining out to celebrate S. Henderson's birthday and placed a long-term strain on their marriage.

The Hendersons' Subsequent Communications with Villa Roma

24. On February 18, 2010, J. Henderson sent a letter to Villa Roma, addressed to the management office on Via Veneto Drive. In this letter, she made a formal request to have the ramp installed at the Hendersons' expense.

25. The Via Veneto Drive letter was returned to the Hendersons as "refused."

26. On March 2, 2010, J. Henderson sent a second letter to Villa Roma, addressed to its Post Office Box address in St. Charles.

27. The Hendersons did not receive a response to the second letter.

28. The only accommodation that was directly offered to the Hendersons by Villa Roma was the possibility of using a sliding glass door as a means of entrance to Unit 1915C. This sliding glass door would directly access the unit without requiring entry into the common portion of the building. However, this sliding glass door is too narrow for J. Henderson's wheelchair. Furthermore, it is not possible to lock the sliding glass door from the outside.

29. Unit 1915C was eventually rented to another individual on April 23, 2010.

Conclusions of Law

The MCHR has jurisdiction under §§ 213.075.3 and 213.075.5.

Elements of Discrimination Under § 213.040.1(1)

Section 213.040.1 provides:

1. It shall be an unlawful housing practice:

(1) To refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, to deny or otherwise make unavailable, a dwelling to any person because of...disability...[.]

In order to prevail on their claim of discrimination under § 213.040.1, the Hendersons must establish a prima facie case by showing: (1) they are protected by the statute; (2) Villa Roma refused to rent to them after they made a bona fide offer to rent; and (3) J. Henderson's disability was a factor in Villa Roma's refusal to rent to them.² Once the Hendersons have established a prima facie case, the burden shifts to Villa Roma to provide a legitimate, nondiscriminatory reason for the refusal to rent.³ If Villa Roma articulates such a reason, the Hendersons must then demonstrate the articulated reason is merely a pretext for discrimination.⁴

The Hendersons' Prima Facie Case

The parties do not dispute that J. Henderson is disabled and that the Hendersons are protected under § 213.040.1(1). Section 213.010(4) defines "disability" as:

a physical...impairment which substantially limits one or more of a person's major life activities, being regarded as having such an impairment, or a record of having such an impairment, which with or without reasonable accommodation does not interfere with...occupying the dwelling in question....

² *Van Den Berk v. Missouri Comm'n on Human Rights*, 26 S.W.3d 406, 412 (citing the burden-shifting analysis developed in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792(1973)).

³ *Id.*

⁴ *Id.*

“Reviewing courts have interpreted this statutory definition of disability as having two parts: 1) a person must have an impairment that limits major life activity; and 2) with or without reasonable accommodation, that impairment must not interfere with ... occupying the dwelling.”⁵

Due to an accident, J. Henderson’s spinal cord was severed between the eleventh and twelfth thoracic vertebrae, causing permanent inability to walk. The ability to walk is a “major life activity,”⁶ and J. Henderson’s injury has taken away this ability. J. Henderson was able to easily move through the display unit in her wheelchair. Consequently, her injury did not interfere with her occupying the dwelling. Accordingly, we find that Henderson has a disability within the meaning of § 213.010(4).

The parties do not dispute that that the Hendersons made a bona fide offer to rent the apartment.⁷ The Hendersons submitted a lease application, an application fee, and a deposit.

The Hendersons informed Vermett that a ramp needed to be built in order to access Unit 1915C. Villa Roma refused to build a ramp and, in effect, refused to rent to the Hendersons. This refusal to rent was clearly based on J. Henderson’s disability since it stems from a refusal to provide access into the building for her wheelchair. Therefore, J. Henderson’s disability was a factor in Villa Roma’s refusal to rent to the Hendersons.

We find that the Hendersons established a prima facie case under § 213.040.1(1).

Villa Roma’s Nondiscriminatory Reason

Villa Roma stated the nondiscriminatory reason for its action is that Unit 1915C was not available for rent.

⁵ *Wells v. Lester E. Cox Medical Centers*, 379 S.W.3d 919, 924 (Mo.App. S.D. 2012).

⁶ See 8 CSR 60–3.060(1)(C) (defining “major life activity” to include ambulation in the context of employment discrimination).

⁷ Section 213.010(16) defines “rent” as “to lease, to sublease, to let and otherwise to grant for consideration the right to occupy premises not owned by the occupant [.]”

Hendersons' Response to Villa Roma's Nondiscriminatory Reason

The Hendersons had the burden to prove Villa Roma's nondiscriminatory reason was pretextual. The interactions between the Hendersons and Vermett on February 10, 2010, and February 16, 2010, demonstrate that the negotiations centered on Unit 1915C. The Hendersons and Vermett discussed Unit 1915C, Vermett took the Hendersons to the door of Unit 1915C, and the parties discussed a ramp leading to the security door of Building 1915. Therefore, we find Vermett offered Unit 1915C to the Hendersons.

On their application, the Hendersons indicated they preferred to move in by mid-March 2010. However, they stated this move in date was flexible. The lease on Unit 1915C ended on March 31, 2010, and Unit 1915C was rented to another individual on April 23, 2010. We therefore conclude Villa Roma's stated reason was pretextual.

Villa Roma refused to rent to the Henderson due to J. Henderson's disability after the Hendersons made a bona fide offer to rent in violation of §213.040.1(1).

Actual Damages

Section 213.075.11(1) provides:

11. When the case is heard by a panel of the commission, the chairperson of the commission shall select the hearing panel and the presiding officer. The presiding officer shall have full authority to call and examine witnesses, admit or exclude evidence and rule upon all motions and objections. The panel shall state its findings of fact and conclusions of law, and if, upon all the evidence at the hearing, the panel finds:

(1) That a respondent has engaged in an unlawful discriminatory practice as defined in this chapter, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action, as in the panel's judgment will implement the purposes of this chapter, including, but not limited to...the extension of full, equal and unsegregated housing...payment of actual damages; and the submission of a report of the manner of compliance[.]

Section 213.075.11(1) provides for "actual damages" when a respondent has engaged in an unlawful discriminatory practice. "A damage award is designed to fulfill the remedial purposes of the civil rights laws and compensate a wronged person for the loss or injury suffered."⁸ "[A]ctual damages may be awarded in a housing discrimination case for deprivation of civil rights, emotional distress, and humiliation."⁹

Deprivation of Civil Rights

The amount of damages recoverable for a deprivation of civil rights depends on the severity of the harm suffered by the person whose rights have been affected.¹⁰ In this case, Villa Roma acted willfully and knowingly when violating § 213.040.1 and infringing on the Hendersons' civil rights by refusing to rent to them based on J. Henderson's disability. The Hendersons are entitled to an award of damages of \$3,000 for the violation of their civil rights.¹¹

Emotional Distress and Humiliation

Damages for emotional distress and humiliation do not require the need for expert testimony. Rather, it can be inferred from the circumstances.¹²

The circumstances in this case are exemplified by the heated exchange on February 16, 2010 between Vermett and the Hendersons:

A [J. Henderson]: ...So we went down there to put the security deposit down and the application fee and there's already some talk about it not being possible for us to build a ramp, they said no. The reason, I did not understand at all. So it was from that conversation she referred to -- and I was already getting -- I was getting nervous at that point because we had been looking for so long and just whatever, I was getting nervous that it wasn't going to work out. We had already signed the paperwork and given

⁸ *Van Den Berk*, 26 S.W.3d at 413.

⁹ *Id.* (Internal citations omitted.)

¹⁰ *Missouri Commission on Human Rights v. Red Dragon Restaurant*, 991 S.W.2d 161, 171 (Mo.App. W.D. 1999).

¹¹ See *Van Den Berk*, 26 S.W.3d at 413 (Van Den Berk refused to rent to the Austins because of their race. The court awarded Mr. and Mrs. Austin \$1,000 each for violation of civil rights).

¹² *State ex. rel. Dean v. Cunningham*, 182 S.W.3d 561, 568 (Mo. banc 2006).

[Vermett] the \$100 and stuff but she referred to another tenant that, you know, uses a wheelchair and didn't need anything and that's basically when she said, "I knew you would be too much trouble that's why I didn't want to rent to you."

Q [Ellis]: So Ms. Vermett made the statement to you?

A.: Yes.

Q.: And what was your reaction?

A.: Jaw dropping. My reaction, I mean, that would be discrimination if you didn't rent to us because we were too much trouble.

Q.: And what was her response?

A.: She said "I know," which implied to me, I know, that's why I have to put up with you.

Q.: Did you say anything back to her?

A.: No, I knew that after that we couldn't communicate anymore, that there was too much...

Q.: Did she make any other statements to you while you were there?

A.: No, we left.^[13]

This exchange led to the Hendersons being shocked, angry, and humiliated. This exchange also changed their immediate plans of dining out to celebrate S. Henderson's birthday and placed a long-term strain on their marriage. Therefore, we find Villa Roma's actions caused significant emotional distress and humiliation for the Hendersons. They are entitled to an award of damages for emotional distress and humiliation in the amount of \$2,000.¹⁴

We recommend a total amount of \$5,000 in actual damages to the Hendersons.

¹³ Tr. at 98-99.

¹⁴ See *Van Den Berk*, 26 S.W.3d at 414 (Van Den Berk refused to rent to the Austins because of their race. The court awarded Mr. Austin \$1,000 for emotional distress and Mrs. Austin \$5,000 for emotional distress. In addition to stress and depression, the Austins claimed the discrimination contributed to a marital separation).

Civil Penalty

Section 213.075.11(2) provides:

11. When the case is heard by a panel of the commission, the chairperson of the commission shall select the hearing panel and the presiding officer. The presiding officer shall have full authority to call and examine witnesses, admit or exclude evidence and rule upon all motions and objections. The panel shall state its findings of fact and conclusions of law, and if, upon all the evidence at the hearing, the panel finds:

......*

(2) That a respondent has engaged...in a violation of section 213.040. ...the commission may, in addition to the relief provided in subdivision (1) of this subsection*, assess a civil penalty against the respondent, for purposes of vindicating the public interest:

(a) In an amount not exceeding two thousand dollars if the respondent has not been adjudged to have violated one or more of the sections enumerated in subdivision (2) of this subsection within five years of the date of the filing of the complaint;

(b) In an amount not exceeding five thousand dollars if the respondent has been adjudged to have committed one violation of the sections enumerated in subdivision (2) of this subsection within five years of the date on which the complaint is filed;

(c) In an amount not exceeding ten thousand dollars if the respondent has been adjudged to have committed two or more prior violations of the sections enumerated in subdivision (2) of this subsection within seven years of the date on which the complaint is filed. All civil penalties set forth in this subsection shall be paid to the human rights fund.

Villa Roma violated § 213.040. We recommend that the MCHR assess a civil penalty against Villa Roma in the amount of \$2,000.

Summary

The Hearing Examiner recommends that MCHR order Villa Roma to:

1. cease and desist from further discriminatory practices;
2. pay the Hendersons \$3,000 in actual damages for deprivation of civil rights;

3. pay the Hendersons \$2,000 in actual damages for emotional distress and humiliation; and

4. pay a civil penalty of \$2,000.

Pursuant to 8 CSR 60-2.200(1), the parties may file exceptions within 10 days of the date of this recommended decision.

SO RECOMMENDED on May 29, 2013.


SREENIVASA RAO DANDAMUDI
Hearing Examiner