7-2015

Common Law Petition for Writ of Certiorari, Beasley v. Chicago Commission on Human Relations & Betts Realty (Cook County 2015)

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John Marshall Fair Housing Legal Clinic

#33789

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT - CHANCERY DIVISION

Cherry Beasley, Petitioner/Complainant v. Chicago Commission on Human Relations & Betts Realty Group, P.C., Defendants	)	No: 2015CH10860 CALENDAR/ROOM 16 TIME 00:00 Admin Review

COMMON LAW PETITION FOR WRIT OF CERTIORARI

Petitioner, Cherry Beasley, by and through her attorneys, J. Damian Ortiz and the Students of the John Marshall Fair Housing Legal Clinic, hereby complain of Defendants Chicago Commission on Human Relations ("CCHR" "The Commission") and Betts Realty Group, P.C. ("Respondent") as follows:

2015 JUL 16 PM 12:07

VENUE

Ms. Beasley holds a Housing Choice voucher and filed a complaint with Defendant Commission on or about January 29, 2013. The case was docketed as number 12-H-77. In order to have the Defendant Commission's Order and findings reviewed, CCHR regulations and the Administrative Review Act ("ARA") require that a writ of certiorari be filed with the Circuit Court of Cook County, Chancery Division pursuant to Commission regulation 250.150. *See* Reg. 250.150 attached as Exhibit "A". The petition must be filed within 35 days from the time that the Final Order was served. *Illinois Code of Civil Procedure,* 735 ILCS 5/3-103. *See* 735 ILCS 5/3-103 attached as Exhibit "B".

PARTIES

Defendant, CCHR was, at all times relevant to the matters set forth herein, the deciding agency.

Defendant, CCHRis, at all times relevant to the matters set forth herein, an agency of the City of Chicago with offices in County of Cook, State of Illinois.

Defendant, Betts Realty Group, P.C., was a proper Respondent and the only entity in Case No. 12-H-77 alleged to have discriminated against the Petitioner, Ms. Beasley. The type of discrimination alleged as well as the form of the discrimination that took place, has been held by the Defendant, CCHR to be in violation of the Chicago Fair Housing Ordinance ("the Ordinance") in several rulings. *See Cooper v. Park Management and Investment, LLC,* CCHR Case No. 03-H-48 (November 17, 2003)*; Rankin v. 6945 N. Sheridan Inc., et al,* CCHR Case No. 08-H-49 at 6 (August 18, 2010)*; Shipp v. Wagner* CCHR Case No. 12-H-19 (July 16, 2014).

PROCEDURAL POSTURE

On May 29, 2015, Defendant CCHR issued a final order, titled "Order Denying Request for Review." ("CCHR Order") *See as* Exhibit "B". The Request for Review was filed in response to an order titled, "Order Finding No Substantial Evidence." ("CCHR Final Order") *See as* Exhibit "C". A true and correct copy of each Order is attached hereto respectfully as Exhibits "B" and "C".

The Defendant, CCHR is the only tribunal where a source of income case may be filed within the City of Chicago. As such, the Defendant, CCHR's Order requires this common law petition for writ of certiorari to be filed and the ARA mandates its filing with this Court.

FACTS

Cherry Beasley receives a 2-bedroom Housing Choice Voucher, which is administered by the Chicago Housing Authority's ("CHA") mobility program. She has held this voucher for 24 years. She found out about a 2-bedroom house at 10506 S. Woods, Chicago, IL, through the Section 8 mobility program. She called the Betts Realty Group Office ("Betts") on or about October 9, 2012 and was told to come and view the property on that same day at 4:00 PM with realtor Peter Chrysanthou ("Chrysanthou"). Ms. Beasley showed up at the property for the scheduled meeting and after waiting for 2 hours, Chrysanthou rescheduled with her for the same time on the next day.

On or about October 10, 2012, Ms. Beasley showed up again for her appointment to view the property. Chrysanthou again did not show up as scheduled and instead sent Ms. Beasley a text message stating, that he had been told that he unit was not Section 8 approved. *CCHR Order Finding No Substantial Evidence* at 5, (October 9, 2013). *See Ex. C.* Chrysanthou had spoken to Ms. Hinton, agent for Betts. In that conversation he asked Hinton if the unit was Section 8 approved. Hinton replied, "no." *Id. See* Ex. C. Betts has admitted to the discrimination by stating that Section 8 was not approved at that location under paragraph two of their response to Ms. Beasley's original complaint (with previous counsel). *Respondent's Response to Complaint,* at 3 (January 17, 2013.). Betts stated this was their reason; advising Chrysanthou to cancel his appointment with Ms. Beasley. The viewing of the housing was no longer necessary once Betts advised Chrysanthou that Ms. Beasley's source of income to pay the rent was not accepted.

In October of 2013 the Chicago Commission on Human Relations ("CCHR") issued its determination of No Substantial Evidence. Specifically, the Commission found that "There is no showing that Hinton's answer to Chrysanthou's question expressed any refusal to participate in

the Housing Choice Voucher program, or a belief that the unit would not qualify for the program. Hinton *merely responded to a question.* There was no evidence that Respondent would not have accepted or processed an application from the Complainant." *CCHR Order Finding No Substantial Evidence* at 7, (October 9, 2013). Emphasis added. *See* Ex. C.

On May 29, 2015 the CCHR denied the Beasley's Request for Review. The Order was mailed on June 11, 2015. *See* Ex. D. Pursuant to the *Illinois Administrative Review Act*, 735 ILCS 5/3-101, Beasley may seek further review by filing a common law writ of certiorari with the Chancery Division of the Circuit Court of Cook County within 35 days from when the Order was served.

STANDARD OF REVIEW

When the court reviews the findings and conclusions of an administrative agency, questions of fact are "held to be *prima facie* true and correct." *Godinez v. Sullivan-Lackey, 352 Ill. App. 3d 87,* 90 (1st Dist. 2004). The court is not permitted to overturn a decision by an administrative body "unless the authority of the administrative body was exercised in an arbitrary or capricious manner." *Id.* "Arbitrary and Capricious" is legally synonymous with "abuse of discretion" which is defined as "determinations that are wholly inconsistent with the facts and circumstances...and the deductions that can reasonably be made from the facts and circumstances; any unreasonable, unconscionable [or] arbitrary action taken without proper consideration of the facts and law pertaining to the matter submitted." *Steven H. Gifis, Barron's Law Dictionary (6th Ed. 2010).*

The court may also overturn an administrative decision if that decision is against the manifest weight of evidence. *Godinez* at 90. Quoting *O'Neil v. Ryan,* 301 Ill. App. 3d 392, 400 (1st Dist. 1998). Moreover, the court may overturn a decision if it finds that the agency's decision

was "palpably erroneous." *Atkins v. City of Chicago Comm'n Human Rels. ex rel. Lawrence,* 281 Ill. App. 3d 1066, 1074 (1st Dist.1996) quoting *Hsu v. Human Rights Comm'n* 180 Ill. App. 3d 949, 953 (1st Dist. 1989). On the other hand, the court need not give deference to the Administrative agency in regards to questions of law, which are reviewed *de novo*. *Godinez* at 90.

ARGUMENT

I. THE COMMISSION ERRED BY APPLYING THE WRONG EVIDENTIARY STANDARD

The Order Finding No Substantial Evidence, issued by the Commission in October of 2013 states that the basis for the finding was that the Respondent's agent, Hinton, did not express refusal to participate in the Housing Choice Voucher program. *Order Finding No Substantial Evidence,* CCHR Case No. 12-H-77 at 7 (October 9, 2013). *See* Ex. C. The Commission offers no other rationale, however the subsequent Order Denying Request for Review elaborates further. *Order Denying Request for Review,* CCHR Case No. 12-H-77 at 1, 2 (October 9, 2013). *See* Ex. D. Despite the fact that Beasley's claim that she was told that the unit was not "Section 8 approved" was corroborated by Chrysanthou and the Respondent admitted to making that statement, the Commission states that it "believed" Hinton when she asserted that she was simply answering Chrysanthou's question. *Id.* It begs the question: How is this not a party admission and direct evidence that the Ordinance was violated?

The Commission has held that a violation of the CFHO occurs when there is a refusal to consider an applicant to rent an apartment due to her protected status. *Gardner v. Ojo,* CCHR Case No. 10-H-50 at 9 December 19, 2012). The *Rules and Regulations Governing the Fair Housing Ordinance* specifically state that, "[i]t is a violation of the [Fair Housing Ordinance] for a person to refuse to sell, rent, or lease a dwelling to a person or to refuse to negotiate with a person for sale, rental or leasing of a dwelling because of that person's membership in a protected class. Such

prohibited actions include but are not limited to: (a) Failing to accept or consider a person's offer because of that person's membership in a protected class." *Rankin v. 6954 N. Sheridan, Inc.*, CCHR Case No. 08-H-49 at 6 (August 18, 2010) quoting *CCHR Reg. 420.130 (a).*

The *Rules and Regulations Governing the Fair Housing Ordinance* further make it a violation to:

> "cause to be *made*, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling which indicates any actual or intended preference, limitation, or discrimination because of a person's membership in one of the protected classes. (a) the prohibition will apply to all written, or *oral* notices, statements, or advertisements by any...person...having the right to sell, rent, lease, or sublease any housing accommodation or any agent of these. (b) Discriminatory notices, *statements* and advertisements include but are not limited to, the following: *1) using words, phrases...which would convey or suggest to a reasonable person any preference, limitation, or discrimination regarding the availability of a dwelling based on membership in a protected class." Shipp v. Wagner and Wagner,* CCHR Case No. 12-H-19 at 4-5 (July 16, 2014) quoting *CCHR Reg. 420.120.* Emphasis added.

It is undisputed that when Beasley informed Chrysanthou that she intended to use a Housing Choice voucher, he spoke to Respondent's agent, Hinton, and asked if the unit was "Section 8 approved." It is also undisputed that Hinton replied, "no." *Respondent's Response to Complaint,* at 3 (January 17, 2013.). Despite the fact that Hinton, an agent of a person having the right to rent a dwelling, caused an oral statement suggesting a limitation on Beasley's ability to rent the apartment, the Commission found No Substantial Evidence. The Commission stated that it "believed" that Hinton was only answering a question rather than expressing discriminatory intent and there was no evidence that the statement indicated a refusal to participate in the voucher program. *Order Finding No Substantial Evidence,* CCHR Case No. 12-H-77 at 7 (October 9, 2013). *See* Ex. C. However, in a subsequent matter, the Commission held in favor of the complainant where the respondent placed an ad on Craigslist stating, "Not Section 8 approved.

Shipp at 3. During the hearing the respondent testified that he spoke to the complainant by phone and when she asked him if he "would accept Section 8" he told her "he was not Section 8 approved." *Id* at 4.

While most intentional discrimination claims rely on indirect evidence, when a complainant has direct evidence, she can "prove intent" with credible evidence showing "discriminatory intent." *Rankin* at 6. Direct evidence is that which, "if believed, will allow a finding of discrimination with no need for inferences. *Id.*

Furthermore, "[u]nder the direct evidence method in a fair housing case, a complainant may meet her burden of proof through credible evidence that the respondent directly stated or otherwise indicated that s/he would not offer housing to a person based on a protected class, such as having and intending to use a Section 8 voucher." *Shipp* at 5. The Commission does not require corroboration by other evidence in order to prove a complainant's claim. *Rankin* at 10.

In the case at bar, and as stated above, Hinton does not dispute that she answered "no" to the question regarding Section 8. Although not required, Chrysanthou corroborates this fact. The Commission applied the indirect evidence standard to this statement. Yet, in the earlier *Rankin* matter, the Commission treated an analogous statement as direct evidence. *Rankin* at 4, 7. The Commission held the same in a subsequent case where the respondent told the complainant by phone that he was "not Section 8 approved." *Shipp* at 4. In this case, the Commission has derailed itself from its own precedent.

The Commission states time and again that it based its decision in the present case on the fact that Beasley failed to present credible evidence demonstrating discriminatory intent on the part of Hinton or the Respondents. However, had the Commission applied the direct evidence standard, as it should have, it would not have been necessary to make inferences into Hinton's

intent. *Rankin* at 6. Beasley should not have had to present any evidence beyond the statement itself for the Commission to at minimum find the scintilla of evidence necessary to proceed. *Shipp* at 6.

Because the Commission has found No Substantial Evidence based on an erroneous evidentiary standard, inconsistent with the standard applied to its own precedent with similarly situated complainants and because the decision was contrary to both CCHR precedent and regulations, Beasley could not reliably predict an equitable application of the law. For that reason, the Commission's decision was both arbitrary and capricious and merits review and reversal by this Court.

II. THE COMMISSION ERRED BY ARBITRARILY APPLYING THE FUTILE GESTURE DOCTRINE

In general the Commission holds that submitting an application is an element of establishing a prima facie case where submission of an application is a "necessary precondition to rent[.]" *Gardner* at 10. However an exception is made if the complainant can demonstrate that completing and submitting an application would have been a "futile gesture." *Id.* The futile gesture doctrine is used when the complainant does not complete an application after it has been made clear "the respondent will not rent to the complainant because of a protected status. *Rankin* at 7. The doctrine is used when, under the indirect evidence method, the complainant must show that an application was submitted." *Gardner* at 10.

The Commission places a great deal of weight on the fact that Beasley did not submit an application to rent the apartment after Chrysanthou canceled the showing upon receiving his answer from Hinton. *Order Denying Request for Review,* CCHR Case No. 12-H-77 at 2 (October 9, 2013). "There is no evidence that Respondent would not have accepted or processed and application from [Ms.Beasley]." *Order Finding No Substantial Evidence,* CCHR Case No. 12-H-

77 at 7 (October 9, 2013). *See* Ex. C. The Commission has been inconsistent in regards to the importance it places on whether or not the complainant submits an application. *See Rankin v. 6945 N. Sheridan Inc., et al,* CCHR Case No. 08-H-49 at 6 (August 18, 2010); *Shipp v. Wagner* CCHR Case No. 12-H-19 (July 16, 2014).

In *Jones v. Shaheed,* CCHR Case No. 00-H-82 at 14-16 (October 24, 2003) the Commission established a four-prong test for when the doctrine will be applied to a complainant. First, the complainant must show that "she is a member of a protected class who was a bona fide renter of the property and financially able to rent the apartment at the time it was available." *Id.* Second, she must that the owner or owner's agent discriminated against members of the same class. *Id.* Third, the complainant must show she was reliably informed of the policy of discrimination. *Id.* The fourth prong is that the respondent "*would have*" discriminated against the complainant if she did indeed apply. *Id.* Emphasis added.

The reality is that the test is little more than a tautology; in that it can only be applied where the respondent has so obviously engaged in a discriminatory practice (by explicitly communicating a discriminatory policy) that the complainant would have direct evidence sufficient to avoid the need of the doctrine altogether. *Id.* The fourth prong is particularly problematic, requiring the complainant to show that they didn't apply because they would have been denied if they did. *Id.* Through the *Jones* test, the Commission has set up a complicated scheme that expects the complainant to attempt to predict the future at best and prove a negative at worst.

It is not always entirely clear to the Commission when it should apply the doctrine. It writes, "...the Commission has applied the futile gesture doctrine *only* where respondents have unambiguously communicated their discriminatory policies to complainants." *Gardner* at 12. Emphasis added. This is untrue. In *Rankin* there is no mention of the test. The CCHR held that

failure to complete an application was "of no consequence" because [Rankin] was rejected before he applied. *Rankin* at 7. In *Rankin,* the Complainant intended to have his daughter complete an application until respondent called him and said they were not renting to Section 8 recipients. *Id.* at 7. The Commission also held that it was not fatal to the case that neither the hearing officer nor the Commission found that the respondents maintained a "blanket policy" against renting to Section 8 voucher holders, rather the dispositive fact was that the respondent's agent "told the complainant that he would not be able to rent the unit he wanted..." *Id.* at 10-11. Yet, in *Gardner,* they applied the test to the detriment of the complainant. *Gardner* at 11.

Similar to *Rankin*, the Commission allowed a complainant to invoke the doctrine simply by alleging that the respondent's agent stated that the respondents would not accept a Section 8 voucher. *Cooper v. Park Management and Investment, Ltd.,* CCHR Case No. 03-H-48 (November 17, 2003). Like *Rankin* and *Shipp*, the Respondent's agent told Beasley, albeit through Chrysanthou that the available unit was not "Section 8 approved." Nevertheless, the Commission weighed Beasley's implicit belief in the futility of submitting an application against her. Neither the *Order Finding No Substantial Evidence* nor the *Order Denying Request for Review* mentions the Commission's own test found in *Jones*. *See* Ex. C and Ex. D.

Post *Jones* it is impossible to know when the Commission will allow a complainant to invoke the futile gesture doctrine or whether the four-prong *Jones* test will apply or not. This is by definition arbitrary. It necessarily leads to inconsistent application of the law and creates insecurity for complainants with legitimate and reasonable belief that their submission of an application would have been futile. Because the Commission applies the futile gesture doctrine arbitrarily, the Circuit Court should review its findings.

III. THE COMMISSION ERRED IN ITS CONSTRUCTION AND INTERPRETATION OF THE CHICAGO FAIR HOUSING ORDINANCE THEREBY DEFEATING THE PURPOSE OF THE ACT

The Chicago Fair Housing Ordinance was enacted to provide protection to those who belong to protected classes from discrimination. The CCHR has been given the task of adjudicating violations and therefore it has been primarily responsible for construing and interpreting the meaning of the Ordinance. *Page v. City of Chicago,* 229 Ill. App. 3d 450, 463 (1st Dist. 1998). The Commission erroneously found No Substantial Evidence in the Beasley matter because it too narrowly construed the term "prospective renter." The Commission additionally misinterpreted the CFHO by limiting violations only to discrimination when the ordinance also prohibits distinctions. Through these errors the Commission has violated its own rules regarding statutory construction and defeated the express purpose of the CFHO to the detriment of Beasley.

For the reasons fully set forth above, the CCHR should have applied the direct evidence standard to the evidence submitted by Ms. Beasley. However, when the Commission used the indirect evidence method, they require that the complainant demonstrate a *prima facie* case for housing discrimination. *Gardner* at 10. To do so, the complainant must satisfy four elements: 1) establish that she is a member of a protected class; 2) show that the respondents knew she was a member of the protected class; 3) show that she was "ready and able" to rent the unit; and 4) establish that she was not allowed to rent the unit. *Pierce v. New Jerusalem Christian Development Corp.,* CCHR Case No. 07-H-12/13 at 5 (February 16, 2011).

The Commission holds that to satisfy element three, the complainant must submit an application when the application is a "necessary precondition" to rent. *Gardner* at 10. Ostensibly, this is to ensure that the complainant was truly eligible to rent and that the denial was truly discriminatory. *Id.* However, the CFHO states:

> "It shall be an unfair housing practice and unlawful for any owner, lessee, sublessee, assignee, managing agent, or other person, form or corporation having the right to sell, rent, lease or sublease any housing accommodation, within the City of Chicago, or any agent of theses, or any real estate broker licensed as such:
> A) To make any distinction, discrimination or restriction against any person in the price, terms, conditions or privileges of any kind relating to the sale, rental, lease or occupancy of any real estate used for residential purposes in the City of Chicago or in the furnishing of any facilities or services in connection therewith, predicated upon the...source of income or the *prospective or actual* buyer or tenant thereof..."

CFHO, § 5-08-030. Emphasis added.

When the Commission construes the CFHO it "must look first to its language, giving words their popular, ordinary and plain meaning unless otherwise defined. *Smith v. Wilmette Real Estate & Management Co.,* CCHR Case No. 95-H-159 at 3 (April 13, 1999). It further holds that because the purpose of the ordinance is remedial it should be liberally construed. *Id.* The Commission has "a duty to avoid a construction of the [CFHO] that would defeat the [ordinance's] purposes or yield an absurd or unjust result." *Id.* quoting *In re: A.P.,* 179 Ill. 2d. 184 (Ill. 1997). Additionally, it holds that the City Council "clearly expressed its policy that 'all residents' of the city" should not be discriminated against as they seek housing. *Id.* at 5. *See also Godinez v. Sullivan-Lackey,* 352 Ill. App. 3d. 87 (Ill. Ct. App. 2004).

The Appellate Court of Illinois holds that in statutory construction, the intent of the legislative body is the "controlling inquiry" and the "language is the best indicator of intent." *Atkins v. City of Chicago Comm'n Human Rels. ex rel. Lawrence,* 281 Ill. App. 3d 1066, 1077 (1st Dist.1996).

The pertinent issue is whether a complainant must have actually applied (in absence of invoking the previously discussed "futile gesture" doctrine) to be considered a "prospective renter." The Commission claims that it will give the words of the ordinance their plain and popular

meaning. *Smith* at 3. The definition of "prospective" is "(of a person) expected or expecting to be something particular in the future." *Christine A. Lindberg, New Oxford American Dictionary (3d Ed. 2010).* For instance, The John Marshall Law School Website, as well as countless other university websites, has a link for "Prospective Students." *The John Marshall Law School,* Home Page, http://www.jmls.edu (last visited June 18, 2015).

A potential student need not complete an application to access this tab. On the contrary, the tab itself offers a link and instructions for application. *Id.* To require that a complainant submit an application in order to become a "prospective renter" ignores the plain and popular meaning of the term. The Commission's arbitrary distinction defeats the intent and purpose of the ordinance and leads to "absurd and unjust" findings.

Indeed, no other term or phrase within the CFHO is construed in a way that narrows the common meaning. Instead the words are given broad meaning, often beyond their plain meaning in an attempt to grant added protection for the populations covered by the ordinance as intended by the City Council. *Smith* at 5. It is well established that ambiguous terms like "source of income" have been broadly construed by the Commission and the definition affirmed by the Appellate Court of Illinois. *Godinez* at 91. The Commission has even construed "race," perhaps the least ambiguous of the protected classes, in the broadest way possible, allowing a white tenant to sue for racial discrimination when he was denied the opportunity to have an African-American roommate. *Anderson v. Stavropoulos,* CCHR Case No. 98-H-14 at 5 (February 16, 2000).

In the instant case, Ms. Beasley was a prospective renter the moment she inquired with Chrysanthou about the advertised unit. The Commission saw otherwise. However, it is clear that the Commission erred in its finding by not following its own rules of statutory construction and

too narrowly construing the term "prospective renter" by limiting the term to those who have completed the application process.

In addition to the aforementioned rules regarding statutory construction, the Appellate Court of Illinois additionally held that when construing a statute it must be read as a whole and "no word should be interpreted so as to be rendered meaningless." *Atkins* at 1077.

Beasley mentioned to her realtor, Chrysanthou that she intended to use her "Section 8" voucher to pay for the unit in question. Chrysanthou then asked Hinton if the apartment was "Section 8 approved." It is self-evident that to ask and answer that question required that a distinction be made between Ms. Beasley and someone who would not require the voucher to pay the rent. A prospective renter without a "Section 8" voucher would render the question and answer moot because the question would most likely not be asked (and therefore not answered) at all.

A distinction was in fact made and completed the violation of the ordinance. The Commission's findings ignored that this, or that any, distinction was made. To be more precise, the Commission interpreted the ordinance in such a way as to render the word, "distinction" meaningless. As a result, Ms. Beasley's case was dismissed and the Commission subsequently refused to review its finding in spite of the numerous errors raised by the Request for Review and its own precedent. For this reason, this Court should review and reverse the findings of the Commission in this case.

CONCLUSION

WHEREFORE, for the foregoing reasons, Ms. Beasley respectfully prays that this Court issue a Writ of Certiorari in this cause requiring Defendants to file the record of all matters relating to this decision with the Court; that the Court review the decision of the Defendants, reverse the Order of the Commission, and for any other relief this Court deems as equitable.

Respectfully Submitted,

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SUBPART 250 REVIEW AND COMPLIANCE

SECTION 250.100 REVIEW

Reg. 250.110 Review of Dismissals

A complainant seeking review of the full or partial dismissal of a complaint by the Commission or a hearing officer must file and serve a request for review within 28 days of the mailing of the dismissal order. The request must be served on all other parties and the hearing officer (if any). Leave may be granted to respond or reply.

Reg. 250.120 Other Review

In addition to review of dismissals under Reg. 250.110, the following opportunities for review or reconsideration are available under these regulations: (a) motion to vacate or modify procedural sanctions under Reg. 235.150, (b) request for review of decisions not to disqualify a hearing officer under Reg. 240.220, and (c) objections to a hearing officer's recommended ruling including any request for review of interlocutory decisions made during the hearing process under Regs. 240.610(b) and Reg. 240.630(b)(2). No request for review is available for dismissals or other decisions by the Board of Commissioners; see Reg. 250.150 as to appeal of final orders.

Reg. 250.130 Content and Grounds for Review

(a) Content

A request for review must state with specificity the reasons, evidence, or legal authority requiring reversal or modification of the decision in question. The request may not exceed 10 pages without leave from the Commission and must clearly state that the party is seeking reconsideration or review. Any new testimonial or documentary evidence must be provided with the request.

(b) Grounds

Grounds for reversal or modification may include relevant evidence which is newly discovered and not available at the time of the original decision; new and dispositive legal precedent not available at the time of the original decision; a material misrepresentation, misstatement, or omission which was a basis for the decision; or a material error by the Commission or hearing officer. If a complaint was dismissed for failure to cooperate, the request for review must (1) establish good cause for the complainant's noncompliance, at the time required, with the requirement which was the basis for dismissal; and (2) include any missing material which was a basis for the dismissal or show good cause for not doing so.

Reg. 250.140 Grant or Denial of Request for Review

For dismissal orders entered by the Commission, the Commission shall rule on any request for review. For dismissal orders entered by a hearing officer, the hearing officer shall rule on any request for review. The Board of Commissioners shall rule on any request for review submitted with objections to a hearing officer's recommended ruling. If granting a reversal or modification pursuant to a request for review, the order shall describe any further proceedings in the case.

Reg. 250.150 Appeal of a Final Order

To appeal a final order of the Commission, a party must seek a *writ of certiorari* from the Chancery Division of the Circuit Court of Cook County according to applicable law. Neither the Commission nor the Board of Commissioners shall accept or consider requests for review of a final order.

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 5. Code of Civil Procedure (Refs & Annos)
Article III. Administrative Review (Refs & Annos)

735 ILCS 5/3-103
Formerly cited as IL ST CH 110 ¶ 3-103

5/3-103. Commencement of action

Effective: August 14, 2008
Currentness

§ 3-103. Commencement of action. Every action to review a final administrative decision shall be commenced by the filing of a complaint and the issuance of summons within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision, except that in municipalities with a population of 500,000 or less a complaint filed within the time limit established by this Section may be subsequently amended to add a police chief or a fire chief in cases brought under the Illinois Municipal Code's provisions providing for the discipline of fire fighters and police officers.

The method of service of the decision shall be as provided in the Act governing the procedure before the administrative agency, but if no method is provided, a decision shall be deemed to have been served either when a copy of the decision is personally delivered or when a copy of the decision is deposited in the United States mail, in a sealed envelope or package, with postage prepaid, addressed to the party affected by the decision at his or her last known residence or place of business.

The form of the summons and the issuance of alias summons shall be according to rules of the Supreme Court.

This amendatory Act of 1993 applies to all cases involving discipline of fire fighters and police officers pending on its effective date and to all cases filed on or after its effective date.

The changes to this Section made by this amendatory Act of the 95th General Assembly apply to all actions filed on or after the effective date of this amendatory Act of the 95th General Assembly.

Credits
P.A. 82-280, § 3-103, eff. July 1, 1982. Amended by P.A. 88-1, § 6, eff. Jan. 1, 1994; P.A. 88-110, § 5, eff. July 20, 1993; P.A. 88-670, Art. 2, § 2-67, eff. Dec. 2, 1994; P.A. 89-685, § 25, eff. June 1, 1997; P.A. 95-831, § 5, eff. Aug. 14, 2008.

Formerly Ill.Rev.Stat.1991, ch. 110, ¶ 3-103.

VALIDITY

<The Appellate Court of Illinois, First District, has held that a population classification concerning a plaintiff's right to amend an administrative review complaint by adding a defendant constitutes special legislation in violation of Section 13 of Article IV of the Illinois Constitution in the case of Lacny v. Police Bd. of the City of Chicago, App. 1 Dist.1997, 225 Ill.Dec. 602, 291 Ill.App.3d 397, 683 N.E.2d 1265.>

Notes of Decisions (386)

735 I.L.C.S. 5/3-103, IL ST CH 735 § 5/3-103
Current through P.A. 99-7 of the 2015 Reg. Sess.

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City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, Suite 400 Floor, Chicago, IL 60654
312/744-4111 (Voice), 312/744-1081 (Fax), 312/744-1088 (TDD)

IN THE MATTER OF:

Cherry Beasley
Complainant,

v.

Betts Realty Group, P.C.
Respondent.

Case No.: 12-H-77

Date Mailed: October 9, 2013

TO:

J. Damian Ortiz
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Izora Hinton
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ORDER FINDING NO SUBSTANTIAL EVIDENCE

The Chicago Commission on Human Relations has determined that there is no substantial evidence of the ordinance violations alleged in this matter. Accordingly, the case is DISMISSED.

The enclosed Investigation Summary and Determination highlights evidence the Commission found relevant to its decision but does not necessarily describe all evidence received and reviewed. It states the reasoning of the Commission's authorized senior staff but may or may not reflect any investigator's views.

Parties or their attorneys may now inspect the investigation file pursuant to Reg. 220.410. Requests must be made at least two business days before the requesting person wishes the service.

Complainant may seek review of this order by filing and serving a "request for review" within 28 days of the date of mailing shown above, pursuant to Reg. 250.110. An optional form is available from the Commission. A request for review may not exceed ten pages without leave of the Commission and must clearly state that the party is seeking reconsideration or review. The request for review must be served on all other parties. It must state with specificity the reasons, evidence, or legal authority requiring reversal or modification of this dismissal order. Any newly-discovered evidence must be provided with the request.

See the next page for the text of regulations about file access and requests for review. Any requests for file access or communications about a request for review should be directed to JoAnn Newsome, Director of Human Rights Compliance, telephone, 312/744-1548. Do not direct further communications about this case to any investigator.

CHICAGO COMMISSION ON HUMAN RELATIONS
Entered: October 4, 2013

SELECTED REGULATIONS
Applicable After Findings of No Substantial Evidence

A full set of regulations is available from the Commission or at www.cityofchicago.org/humanrelations.

REQUEST FOR REVIEW

Reg. 250.110. Review of Dismissals. A complainant seeking review of the full or partial dismissal of a complaint by the Commission or a hearing officer must file and serve a request for review within 28 days of the mailing of the dismissal order. The request must be served on all other parties and the hearing officer (if any). Leave may be granted to respond or reply.

Reg. 250.130(a). Content of a Request for Review. A request for review must state with specificity the reasons, evidence, or legal authority requiring reversal or modification of the decision in question. The request may not exceed 10 pages without leave from the Commission and must clearly state that the party is seeking reconsideration or review. Any new testimonial or documentary evidence must be provided with the request.

Reg. 250.130(b). Grounds for a Request for Review. Grounds for reversal or modification may include relevant evidence which is newly discovered and not available at the time of the original decision; new and dispositive legal precedent not available at the time of the original decision; a material misrepresentation, misstatement, or omission which was a basis for the decision; or a material error by the Commission or hearing officer. If a complaint was dismissed for failure to cooperate, the request for review must (1) establish good cause for the complainant's noncompliance, at the time required, with the requirement which was the basis for dismissal; and (2) include any missing material which was a basis for the dismissal or show good cause for not doing so.

Reg. 250.140. Grant or Denial of Request for Review. For dismissal orders entered by the Commission, the Commission shall rule on any request for review. For dismissal orders entered by a hearing officer, the hearing officer shall rule on any request for review. The Board of Commissioners shall rule on any request for review submitted with objections to a hearing officer's recommended ruling. If granting a reversal or modification pursuant to a request for review, the order shall describe any further proceedings in the case.

ACCESS TO INVESTIGATIVE FILES

Reg. 220.410(a). Access to Files: General Nondisclosure and Access by Parties. Neither the Commission nor its staff shall disclose any information obtained in the course of investigation or mediation of a case except where otherwise required by law or intergovernmental agreement, or as ordered by a hearing officer pursuant to Reg. 240.370. However, after providing the Commission with notice of at least two business days, parties or their attorneys of record may inspect files pertaining to their own cases at any time after issuance of an order concluding the investigation process or dismissing the case in its entirety.

(1) Notwithstanding the above, the Commission shall not allow parties to inspect internal memoranda, work papers, or notes generated by Commission staff or agents in the course of an investigation, or other materials reflecting the deliberative process, mental impressions, or legal theories and recommendations of the staff or agents of the Commission.

(2) If a party files a written motion establishing good cause or if the Commission *sua sponte* determines that good cause exists, the Commission may require parties seeking access to an investigative file to comply with a protective order limiting use of the information to Commission or related state court proceedings and prohibiting other disclosure of information from the file.

Reg. 220.410(c). Access to Files: Copying Costs. The Commission shall furnish copies of documents available for inspection at a charge not to exceed 20 cents per page plus any delivery costs. Copies shall not be released to the requester until the Commission has received payment in full. A party may seek waiver of

these charges pursuant to Section 270.600.

Section 270.600. Waiver of Commission Fees. A party may by written motion request that the Commission waive its fees for copies of Commission documents. The motion shall be granted only on submission of an affidavit or other statement under oath plus any additional documentation establishing by objective evidence that the requesting party is unable to pay the charges and that the copies sought are necessary for pursuit of the party's claims or defenses in a Commission case. If the party's attorney of record was obtained through a not-for-profit legal assistance provider, the attorney's certification that the provider has determined the party to be indigent is sufficient objective evidence of inability to pay.

City of Chicago
COMMISSION ON HUMAN RELATIONS

INVESTIGATION SUMMARY

Case Number 12-H-77		**Date of Determination** October 2013
Complainant Cherry Beasley		
Respondent Betts Realty Group P.C.		
Type of Case __Employment _X_ Housing __Public Accommodation __Credit __Bonding		
CLAIM	**BASIS**	**DETERMINATION**
Refusal to rent	Source of Income	No Substantial Evidence
Date Complaint Filed November 27, 2012		**Date of Violation** October 10, 2012

1. COMPLAINANT POSITION

Complainant is the recipient of a two-bedroom Housing Choice Voucher. Complainant alleges that on or around October 10, 2012, she had an appointment to view a two-bedroom unit at 10506 S. Wood Street in Chicago with her realtor, Peter Chrysanthou. Complainant alleges that on October 10, she received a text message from Chrysanthou in which he stated, "I was just advised that Wood is not Section 8 approved so our showing is cancelled." Complainant alleges that the listing agent from Betts Realty Group told Chrysanthou that the unit was "not Section 8 approved."

2. RESPONDENT DESCRIPTION & BACKGROUND

Respondent is a realty agency located in Evergreen Park, Illinois.

3. RESPONDENT POSITION

Respondent states that the property was not available for rent on October 10, 2012, but became available on October 20, 2012. Respondent asserts that on October 22, 2012, it received a call and an e-mail from Real Estate Agent Peter Chrysanthou requesting a showing of the property at 10506 S. Wood. Respondent asserts that during the conversation to narrow down a showing time, Chrysanthou asked if the home was "Section 8 approved." Respondent asserts that its agent said no, and that Chrysanthou made the decision to cancel the appointment. Respondent

asserts that its agent did not cancel the showing appointment because the unit had not been approved for Section 8 tenancy.

Respondent asserts that another agent brought in a Section 8 mobility tenant and that the owner of the property began working with that agent so the unit could pass the Chicago Housing Authority Housing Quality Standards inspection. Respondent asserts that the owner signed the Request for Tenancy Approval documents for this tenant on November 19, 2012, and that an inspection of the unit was performed on December 4, 2012.

4. COMPLAINANT REBUTTAL

Complainant asserts that on October 9, 2012, she had an appointment to view the unit but that Chrysanthou did not show up. He rescheduled the showing for October 10, 2012. Complainant asserts that on October 10, 2012, Chrysanthou did not show up again and instead sent the text message that read, "I was just advised that Wood is not Section 8 approved so our showing is cancelled." Complainant asserts that stating that "Section 8 is not approved" is a denial of housing based on Complainant's status as a Housing Choice Voucher holder.

5. WITNESS STATEMENTS

a. **Name:** Peter Chrysanthou
Title or Relationship to Parties: Complainant's Agent
Witness Proposed by: Complainant
Statement Provided: Chrysanthou states that he told Complainant verbatim what the realtor told him. He states that he really does not remember if he cancelled the appointment. He states that he thinks he tried to schedule an appointment and that when he called to schedule it the realtor told him that the apartment was not Section 8 approved. He confirms that he sent Complainant a text message relating to her what the agent said.

b. **Name:** Izora Hinton
Title or Relationship to Parties: Respondent's Broker
Witness Proposed by: Respondent
Statement Provided: Hinton states that the unit went on the market on October 14, 2012. Hinton states that she documents the date and time of every caller and was able to be specific about when Chrysanthou called. Hinton states that Chrysanthou stated that Complainant was approved for the Section 8 mobility program and asked her if the home was Section 8 approved. Hinton states that she said no. Hinton states that she did not tell Chrysanthou to cancel the appointment, or that Section 8 voucher holders were not accepted. He just cancelled the showing. Hinton states that she believes that the successful applicant, who has a Housing Choice Voucher, applied for the unit towards the end of October and that the owner signed off on the Request for Tenancy Approval on November 19.

6. **DESCRIPTION OF RELEVANT DOCUMENTS.** *This may not include every document obtained, but includes any evidentiary documents (other than Complaints, Verified Responses, and Position Statements) on which the Commission bases its determination.*

a. **Title or Description:** E-mails between Hinton and Chrysanthou, dated October 22, 2012
Source: Respondent
Relevant Content: These e-mails show that Chrysanthou contacted Hinton on October 22, 2012 to set up a showing of the property. They settled on the following day at 5:45 p.m.

b. **Title or Description:** Text Messages from Chrysanthou, dated October 24, 2012
Source: Complainant
Relevant Content: Two text messages were provided, both dated October 24, 2012; one time-stamped 12:49 p.m., the other time-stamped 12:50 p.m. Both messages read, "I was just advised that Wood is not Section 8 approved so our showing is cancelled."

c. **Title or Description:** E-mail with application for tenancy, dated November 1, 2012
Source: Respondent
Relevant Content: This e-mail, with the subject line, "10506 S. Wood," is from a broker at Centered International Realty to Izora Hinton. It states that the attached application is from a Section 8 mobility program tenant, Natalia Harris.

d. **Title or Description:** E-mails between Richard Dykstra and Betts Realty, dated November 5, 2012
Source: Respondent
Relevant Content: This e-mail string indicates that both property owners and the property manager wish to rent 10506 S Wood to Harris.

e. **Title or Description:** Request for Tenancy Approval Packet
Source: Respondent
Relevant Content: This document, issued by the Chicago Housing Authority, lists the voucher holder's name and voucher number as well as the owner's name, David Dykstra.

f. **Title or Description:** Request for Tenancy Approval form, page 2
Source: Respondent
Relevant Content: This document lists Natalia Harris as the head of household, Richard Dykstra as an owner, and Jennifer Milazzo as a representative. This document reflects a signature date of November 19, 2012 by Milazzo.

7. DETERMINATION

Complainant alleges that she was denied the opportunity to rent the unit at 10506 S. Wood based on her source of income when her real estate agent cancelled a showing of an available housing unit because he was told that the unit was not "Section 8 approved." Respondent asserts that when the real estate agent called, he merely asked whether the unit was Section 8 approved, and because it was not, Respondent's agent told him no. Complainant's agent opted to cancel the showing even though Respondent's agent did not state that it would not consider renting to Complainant because she had a Housing Choice Voucher. Respondent further asserts that the unit was eventually rented to a Housing Choice Voucher holder.

The investigation revealed that Complainant's realtor, Peter Chrysanthou, contacted Respondent's broker, Izora Hinton, to schedule a showing of the unit. During this conversation, Chrysanthou and Hinton discussed whether the unit was "Section 8 approved." Chrysanthou did not recall much of this conversation. Hinton asserted that Chrysanthou asked her whether the home was Section 8 approved and that she answered, "No." Hinton stated that it was Chrysanthou who made the decision to cancel the showing. Chrysanthou stated that he did not remember whether he cancelled the showing but that he sent Complainant a text message informing her that the housing was not approved for Section 8. The text message provided by Complainant does not indicate who decided to cancel the viewing of the unit.

Complainant asserts that Hinton's statement to Chrysanthou that the unit was not Section 8 approved constitutes a refusal to rent. The evidence does not support this assertion. There is no showing that Hinton's answer to Chrysanthou's question expressed any refusal to participate in the Housing Choice Voucher program, or a belief that the unit would not qualify for the program. Hinton merely responded to a question. There was no evidence that Respondent would not have accepted or processed an application from Complainant. On the contrary, the investigation revealed that the successful applicant is a Housing Choice Voucher holder. The documents provided show that the property owner's representative signed that tenant's Request for Tenancy Approval document on November 19, 2012, which was eight days prior to Complainant's filing of this Complaint.

Accordingly, the Commission finds no substantial evidence of discrimination based on Source of Income.

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:

Cherry Beasley
Complainant,

v.

Betts Realty Group, P.C.
Respondent.

Case No.: 12-H-77

Date Mailed: June 11, 2015

TO:
J. Damian Ortiz
The John Marshall Law School Fair Housing Legal Clinic
315 S. Plymouth Court
Chicago, IL 60604

Izora Hinton
Betts Realty Group, P.C.
9730 S. Western Ave.
Evergreen Park, IL 60805

ORDER DENTYING REQUEST FOR REVIEW

YOU ARE HEREBY NOTIFIED that on May 29, 2015, the Chicago Commission on Human Relations denied Complainant's Request for Review. Based on the criteria for granting a request for review as set forth in Reg. 250.130, the Commission finds that it does not state grounds sufficient to have the Commission modify its decision of October 4, 2013, or to reopen this matter for further proceedings with the Commission for the reasons set forth below.

Complainant, who has a Section 8 Housing Choice Voucher, filed this Complaint alleging that Respondent discriminated against her based on her source of income when its agent, Izora Hinton, told her real estate agent, Peter Chrysanthou, that an available apartment was "not Section 8 approved." Respondent argued that during a conversation to schedule Complainant's viewing of the apartment, Chrysanthou asked Hinton if the unit was Section 8 approved and Hinton responded that it was not, at which time Chrysanthou cancelled the appointment. Respondent asserted that Hinton merely responded to Chrysanthou's question; Chrysanthou made the decision to cancel the showing. Respondent argued that Hinton never stated that Respondent would not accept Complainant's voucher. Moreover, prior to Complainant filing this Complaint, Respondent rented the unit to another Housing Choice Voucher holder. During the Commission's investigation, Chrysanthou could not recall the entire conversation he had with Hinton, or whether he cancelled the appointment for the showing, but affirms that Hinton told him thc unit was not Section 8 approved.

In finding no substantial evidence of source of income discrimination, the Commission determined that there was no showing that Hinton's response to Chrysanthou's question expressed any refusal to rent the housing to a Housing Choice Voucher holder. No evidence was presented that Respondent would not have accepted or processed Complainant's rental application. On the contrary, there was objective documentary evidence that 22 days prior to Complainant filing this Complaint, Respondent communicated by e-mail with the owner of the housing in question about a different Housing Choice

Voucher applicant, and the property owner stated that he wished to rent the unit to that applicant. Fourteen days later, and eight days before Complainant filed this Complaint, the owner signed Chicago Housing Authority Request for Tenancy Approval papers for that applicant.

In her Request for Review, Complainant argues that the Commission erred in finding no substantial evidence of source of income discrimination because (1) a property owner is not exempt from liability for discrimination...because the property in question has not been "Section 8 approved;" (2) while Hinton may have "only" answered Chrysanthou's question, she still made the discriminatory statement that the housing was not Section 8 approved; (3) the Commission made an improper credibility determination when it believed Respondent's version that Hinton only answered Chrysanthou's question; (4) as a real estate professional, Hinton should have known that making such a statement was discriminatory; and (5) the Commission erred in relying on the fact that Respondent later rented the housing to a Housing Choice Voucher holder.

In considering a request for review filed after a finding of no substantial evidence, the Commission looks to see whether a complainant has presented relevant evidence which is newly discovered, and not available at the time of the original decision; new and dispositive legal precedent not available at the time of the original decision; a material misrepresentation, misstatement or omission which was a basis for the decision; or a material error by the Commission. Reg. 250.130(b). The purpose of a request for review is to provide an opportunity to address specific errors, not simply to revisit the investigation or determination. *Williams v. Continental Casualty Co.,* CCHR No. 05-E-125 (Dec. 14, 2006). See also, *Loving v. Marshall Hotel et al.*, CCHR No. 06-H-17 (Nov. 2, 2006).

Complainant's request for review did not provide any basis for reconsideration or reversal of the finding of no substantial evidence. The investigation did not reveal any evidence of intent to discriminate based on Complainant's source of income. While Complainant argues that the Commission made an improper credibility determination when it "believed" Respondent's assertion that Hinton only answered Complainant's question, the Commission assessed the available evidence and determined that Hinton's response did not constitute a refusal to rent. Commission investigations do not resolve any material factual issue based on evidence subject to a credibility determination; but application of the shifting-burden analysis and analysis of the evidence should not be confused with making a credibility determination. *Wong v. City of Chicago Dept. of Fire*, CCHR No. 99-E-73 (Dec. 5, 2002), *aff'd*, No. 03 CH 00793 (Cir. Ct. Cook Co., Dec. 11, 2003). During the investigation, Chrysanthou did not dispute Respondent's characterization of his telephone call with Hinton. He could not confirm what Hinton told him, nor could he recall who cancelled the viewing of the apartment. Furthermore, one could argue that as a real estate professional, Chrysanthou should not have made an inquiry about whether Respondent accepted Housing Choice Vouchers; he should have merely scheduled a viewing of the housing on Complainant's behalf.

The remaining evidence in this case was the undisputed fact that Respondent facilitated the rental of the same housing to another Housing Choice Voucher holder *prior* to Complainant filing this Complaint. Thus, the Commission determined that there was no substantial evidence that Respondent intended to deny Complainant the opportunity to rent the apartment.

Accordingly, the Commission DENIES the Request for Review and reaffirms its finding of no substantial evidence.

CHICAGO COMMISSION ON HUMAN RELATIONS

TO OBTAIN FURTHER REVIEW OF THIS DECISION, THE COMPLAINANT MAY FILE A PETITION FOR A COMMON LAW *WRIT OF CERTIORARI* WITH THE CHANCERY DIVISION OF THE CIRCUIT COURT OF COOK COUNTY ACCORDING TO APPLICABLE LAW. SEE THE ILLINOIS ADMINISTRATIVE REVIEW ACT, 735 ILCS 5/3B101.