

Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

IOWA CIVIL RIGHTS COMMISSION)	
)	
and)	DIA No. 19ICRC0003
)	
ANGELA JACKSON,)	
Commissioner,)	
)	
v.)	
)	
JOHN E. YODER & MILDRED F.)	
YODER IRREVOCABLE TRUST and)	
STUART YODER,)	PROPOSED DECISION
Respondents.)	

This case involves a complaint filed by Complainant Angela Jackson, Commissioner, with the Iowa Civil Rights Commission (the Commission) against Respondents John E. Yoder & Mildred F. Yoder Irrevocable Trust and Stuart Yoder. After an investigation, the Commission found probable cause to believe Respondents engaged in discriminatory advertising. On March 7, 2019, the Commission filed a Statement of Charges and transferred the matter to the Department of Inspections and Appeals for a contested case hearing.

Hearing in this matter was held on May 7, 2019. Assistant attorney general Katie Fiala represented the Commission. Respondent John E. Yoder & Mildred F. Yoder Irrevocable Trust was represented by John E. Yoder. Respondent Stuart Yoder was self-represented.¹ The following witnesses testified: Kerry Hainline; Stephanie Adkisson; Stuart Yoder; and John Yoder. Commission Exhibits 1 through 6 were admitted as evidence in the case.

FINDINGS OF FACT

Respondent John E. Yoder & Mildred F. Yoder Irrevocable Trust (“Respondent Trust”) owns a two-family duplex located at 1001-03 E Avenue in Kalona, Iowa. The property is located in Washington County, Iowa. Both sides of the duplex are operated as rental

¹ Upon their request, Stuart Yoder and John Yoder were permitted to appear at the hearing by telephone.

properties. Stuart Yoder, the son of John Yoder, manages the rental properties.² (Exh. 2, 6).

Commission Testing Process

The Commission engages in telephone testing to collect evidence regarding unfair housing practices. A tester finds advertisements of properties for rent and calls posing as a potential applicant. The tester asks general questions about the property, including availability, rent, and security deposit. For assistance animal testing, the caller also identifies himself or herself as a person with a disability who has an assistance animal for which they have a “doctor’s note.” The tester asks the potential landlord if he or she will waive policies related to the assistance animal, such as a ban on pets or a pet deposit policy. (Hainline testimony).

The Commission records all telephone test calls. If the tester suspects that a violation was committed, he or she will make a transcript of the call and write a report. (Hainline testimony).

September 26, 2017 Testing Call

The Commission found an advertisement in The Gazette Classifieds Online for “[t]wo 2-bedroom, apartments in Kalona & Washington. Call for showing, 319-430-5389.” The post date of the ad is listed as September 11, 2017. (Exh. 4).

In response to the advertisement, the Commission’s tester called the listed number on September 26, 2017. The person who answered the phone identified himself as Stuart Yoder. (Exh. 5). The tester’s conversation with Stuart went as follows, in relevant part:

Tester: Hi. My name is Olivia. And I was wondering I saw the ad online for The Gazette. And I was wondering if you had any two-bedroom apartments in Kalona?

Stuart: I do. I just have one left.

...

Tester: Okay. And what is the address on it?

Stuart: 1-0-0-3 E Avenue.

...

² To avoid confusion, Respondent Stuart Yoder will be referred to by first name in this Proposed Decision.

Tester: Okay. And I'm gonna try to make some other calls. Now I am disabled Stuart. And I do have an assistance animal with a letter from my doctor.

Stuart: Yeah. We don't accept any pets.

Tester: Okay. Would you be willing to waive it since I do have a letter from my doctor? Or?

Stuart: No.

Tester: Okay. So you will not waive it.

Stuart: No.

(Exh. 5, pp. 6-7).

Stuart submitted responses to written questions that the Commission presented during the investigation of this allegation of discrimination. With regard to the subject property's pet policy, Stuart responded that there is no written policy, but that pets are allowed. He further stated that there are dogs in the subject property currently. (Exh. 6).

CONCLUSIONS OF LAW

A. Failure to Make Reasonable Accommodation

In its Statement of Charges, the Commission alleges a single count of failure to make reasonable accommodation in violation of Iowa Code sections 216.8A(3)(a)(1), 216.8A(3)(b)(1), and 216.8A(3)(c)(2). That section of the Iowa Civil Rights Act of 1965 ("ICRA") provides, in relevant part:

3. a. A person shall not discriminate in the sale or rental or otherwise make unavailable or deny a dwelling to a buyer or renter because of a disability of any of the following persons:

(1) That buyer or renter.

...

b. A person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability of any of the following persons:

(1) That person.

...

c. For the purposes of this subsection only, discrimination includes any of the following circumstances:

...

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when the accommodations are necessary to afford the person equal opportunity to use and enjoy a dwelling.³

The discriminatory practice charge in this case arises out of the Commission's use of a tester. In the context of fair housing law, testers are individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful practices.⁴ The Statement of Charges alleges that Respondents discriminated against the tester on the basis of disability when they refused to reasonably accommodate her disability by modifying their no pets policy for an assistance animal.

Given the similarities between the ICRA and the federal Fair Housing Act (FHA), federal court decisions interpreting the FHA are persuasive when considering the provisions of the ICRA.⁵ In *Havens Realty Corporation*, the United States Supreme Court found that testers have standing to sue under the federal Fair Housing Act.⁶ In the *Havens* case, a black plaintiff who was actually searching for an apartment was falsely informed by an employee of the owner of an apartment complex that no apartments were available. The other two individual plaintiffs in the case were testers who were employed by a nonprofit equal housing organization. The tester plaintiffs, one who was black and one who was white, made inquiries about the availability of apartments in the same complex. The black tester was told there were no vacancies at the same complex; the white tester was told there were vacancies.⁷

The FHA provision at issue in *Havens* states that it is unlawful for an individual "to represent to any person because of race, color, religion, sex, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available."⁸ The Supreme Court concluded, based on the statutory language, that Congress intended to confer upon all persons a legal right to truthful information about available housing. The fact that the tester approached the transaction fully expecting to receive false information and without any intention of buying or renting a home did not negate the fact of injury under the relevant provision.⁹

³ Iowa Code § 216.8A(3).

⁴ *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 373 (1982).

⁵ *State v. Keding*, 553 N.W.2d 305, 307 (Iowa 1996) (citing *Lynch v. City of Des Moines*, 454 N.W.2d 827, 833 n. 5 (Iowa 1990)).

⁶ *Id.* at 373-74.

⁷ *Id.* at 367-68.

⁸ *Id.* at 373.

⁹ *Id.* at 373-74.

The Court also concluded that the nonprofit equal housing organization that employed the testers had standing under the FHA as the steering practices at issue in the case impaired its ability to provide counseling and referral services for low and moderate income homeseekers. The Court found that “[s]uch concrete and demonstrable injury to the organization’s activities – with the consequent drain on the organization’s resources – constitutes far more than simply a setback to the organization’s abstract social interests.”¹⁰

The Commission has cited to *Havens* in support of its allegation that Respondents failed to make a reasonable accommodation to the tester in this case in violation of the ICRA. While *Havens* supports the proposition that testers have standing to sue under the provision of the FHA applicable to that case, it does not answer the question of whether Respondents here have violated the ICRA in the manner alleged by the Commission. The plaintiff in a reasonable accommodation action related to housing under ICRA must establish: 1) that the plaintiff is disabled within the meaning of the act; 2) that the defendant knew or reasonably should have been expected to know of the disability; 3) that the accommodation is necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling; 4) that the requested accommodation is reasonable; and 5) that the defendant refused the requested accommodation.¹¹ There is no evidence here that the first element has been satisfied. It is undisputed that the tester told Stuart over the phone that she was a person with a disability; there is no evidence, however, that the tester is actually a person with a disability within the meaning of the ICRA. The tester’s identity is not revealed in the evidence in the case and there is no evidence to suggest that she had the characteristics she purported to have during her conversation with Stuart. Likewise, there is no evidence that the third element is satisfied; namely, that the accommodation is necessary to afford the disabled person – here, the tester – an equal opportunity to use and enjoy the dwelling.¹² Notably, the Commission has cited to no case law in which a statement to a tester was found to constitute a failure to make a reasonable accommodation in violation of either the ICRA or the FHA. Under these

¹⁰ *Id.* at 378-79.

¹¹ *State ex rel. Henderson v. Des Moines Mun. Housing Agency*, 791 N.W.2d 710, *5-6 (Iowa App. 2010) (unpublished) (citing *DuBois v. Ass’n of Apartment Owners of 2987 Kalakaua*, 453 F.3d 1175, 1179 (9th Cir. 2006)).

¹² The Commission’s rules define disability, or “handicap,” to include being regarded as having a physical or mental impairment which substantially limits one or more major life activities. 161 Iowa Administrative Code (IAC) 9.3. Even if the Commission relies on this definition to argue that the tester was a person with a disability, the Commission must still demonstrate that the accommodation is necessary to afford the disabled person an equal opportunity to use and enjoy the dwelling. The Commission has not cited any case law or other authority to indicate that this element can be met where the prospective landlord *believes* that the requested accommodation is necessary to allow an equal opportunity to use and enjoy the dwelling, but where in reality the accommodation is not necessary for the tester.

circumstances, the Commission has not proven any violation under Iowa Code section 216.8A.

B. *Discriminatory Advertising/Statement*

The ICRA also prohibits any person from directly or indirectly advertising, or in any other manner indicating or publicizing, that the rental of any real property by persons with a disability is unwelcome, objectionable, not acceptable, or not solicited.¹³ While the Statement of Charges indicates that probable cause was found to believe that Respondents engaged in “discriminatory advertising,” the Commission did not include an allegation under this section in its Statement of Charges. At hearing, counsel for the Commission made a motion for leave to amend the pleadings to conform to the evidence and add a charge of discrimination under Iowa Code section 216.8(1)(c) if a violation was not found based on the charge that Respondents failed to provide a reasonable accommodation.

Regarding amendment, the Commission’s regulations provide:

161-4.3(17A) Amendment

4.3(1) Any notice of hearing, petition, statement of charges, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance. Leave to amend, including leave to amend to conform to the proof, shall be freely given when justice so requires.

4.3(2) Amendment to conform to proof. When issues not raised by the notice of hearing or the answer are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after the final decision; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the presiding officer may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the presiding officer that the admission of such evidence would prejudice that party in maintaining the action or defense upon the merits. The presiding officer may grant a continuance to enable the objecting party to meet such evidence.

¹³ Iowa Code § 216.8(1)(c).

The Iowa Supreme Court has found that the corresponding rule in the Iowa Rules of Civil Procedure permitting amendments to conform to the proof should receive a liberal interpretation.¹⁴ Respondents did not resist the Commission's motion to amend the pleadings to conform to the evidence.

Under these circumstances, amendment is appropriate and the Commission's motion for leave to amend is granted to include an allegation of discriminatory statement pursuant to Iowa Code section 216.8(1)(c). The Statement of Charges provides that probable cause was found regarding "discriminatory advertising," which put Respondents on notice that this issue was in play. Additionally, the Statement of Facts set forth in the Statement of Charges centers around the statements that Stuart made during the tester's call regarding Respondents' policies for individuals with disabilities who require an assistance animal.

The standard for determining whether a particular statement or advertisement is discriminatory is an objective one. The critical question is how an ordinary reader or listener would interpret the statement. The subjective intent of the person who made the statement is not controlling.¹⁵ Stuart, on behalf of Respondent Trust, represented to the tester that pets were not allowed in the rental unit and that no exceptions would be made for an individual with a disability who has an assistance animal and a letter from a doctor. While Stuart testified at hearing that Respondents actually do allow pets in the subject property and do not have any prohibition against pets, that testimony is directly contradicted by the recording of the call between Stuart and the tester. Whatever Stuart may have meant to say or wished after the fact that he had said, the statement he made to the tester is undisputed. Viewed objectively, this statement indicates that rental by persons with a disability – specifically, persons with a disability who require an assistance animal – is unwelcome and not acceptable. The Commission has proven that Respondents violated Iowa Code section 216.8(1)(c).

At hearing, Stuart argued that he is not a paid property manager for Respondent Trust and therefore should not be held liable for any violation of the ICRA. The section that Respondents violated here applies to any person who is acting for an owner of real property, with or without compensation; the fact that Stuart does not receive compensation does not preclude liability.

C. Remedial Action

Under the ICRA, a respondent who is found to have engaged in a discriminatory or unfair practice shall be ordered to cease and desist from the discriminatory or unfair practice and to take necessary remedial action. The ICRA outlines a range of actions

¹⁴ *Barnhouse v. Hawkeye State Bank*, 406 N.W.2d 181, 187 (citing *Smith v. Village Enters., Inc.*, 208 N.W.2d 35, 37 (Iowa 1973)).

¹⁵ *Id.* at 307.

that may be considered remedial action, but states that remedial action is not limited to those items included in the list.¹⁶ In this case, the Commission requests an order requiring that Respondents: 1) complete two hours of training on the fair housing requirements of the Iowa Civil Rights Act by a trainer approved by the Commission or the U.S. Department of Housing and Urban Development (HUD); and 2) adopt and implement policies and forms for handling requests for accommodation that are made by renters or prospective renters.¹⁷ In addition, the Commission requests that Respondents be enjoined from committing future violations of the ICRA.

The evidence in this case demonstrates that Respondents disregarded the requirements of the ICRA in their dealings with the Commission's tester. The training that the Commission seeks and the Respondents' adoption of standardized policies and forms to process requests for reasonable accommodation will further the purposes of the ICRA and promote future compliance by Respondents in their housing practices. With regard to the request for training, Respondent Stuart Yoder, who manages the property, will be ordered to complete such training. The Respondent Trust does not handle the day-to-day operations of the rental business and, as such, requiring either John E. Yoder or another representative of the trust to complete anti-discrimination training will not significantly promote compliance. The Commission's request that Respondents be enjoined from any future violations of the ICRA is duplicative of the Act itself; any future violations can be dealt with through the complaint and hearing process.

ORDER

The Commission has proven that Respondents John E. Yoder & Mildred F. Yoder Irrevocable Trust and Stuart Yoder committed an unfair housing practice in violation of Iowa Code section 216.8(1)(c). Respondents are ordered to cease and desist from the practice that resulted in the violation.

In addition, Respondent Stuart Yoder is ordered to complete two hours of training on the fair housing requirements of the Iowa Civil Rights Act approved by HUD or the Commission at his own expense. Respondent shall submit proof of completion of training to the Commission within 90 days of the date of this decision. If Respondent has questions about finding training that will meet this requirement, such questions may be directed to the Commission.

Additionally, Respondents John E. Yoder & Mildred F. Yoder Irrevocable Trust and Stuart Yoder are ordered to adopt and implement policies and forms to process requests for accommodation made by tenants and prospective renters. Respondents shall submit

¹⁶ Iowa Code § 216.15(9).

¹⁷ At hearing, the Commission represented that it has draft policies and forms regarding requests for reasonable accommodation on its website that can be used by Respondents if they wish. If Respondents need additional assistance locating such draft policies and forms, they can contact the Commission directly.

these written policies and forms to the Commission within 90 days of the date of the decision. If Respondents have questions about finding policies and forms that will meet this requirement, such questions may be directed to the Commission.

Dated this 6th day of June, 2019.



Laura E. Lockard
Administrative Law Judge

cc: Katie Fiala, AG (by electronic mail)
Stuart Yoder (by first class mail)
John E. Yoder & Mildred F. Yoder Irrevocable Trust (by first class mail)

NOTICE

Any adversely affected party may appeal this proposed decision to the Iowa Civil Rights Commission within 30 days of the date of the decision.¹⁸ The appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. In addition, the appeal shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.¹⁹

The Commission may also initiate review of a proposed decision on its own motion at any time within 60 days following the issuance of the decision.²⁰

¹⁸ 161 IAC 4.23(1).
¹⁹ 161 IAC 4.23(3).
²⁰ 161 IAC 4.23(2).