

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

MELLISA O'BRIEN,) Docket No. 13ICRC003
)
 Complainant,)
)
 And)
)
 IOWA CIVIL RIGHTS COMMISSION,)
)
 v.)
)
 KERRY INMAN,) **PROPOSED DECISION**
)
 Respondent.)

A contested case hearing was held on September 4, 2013 at the Wallace State Office Building before Administrative Law Judge Heather L. Palmer. Assistant Attorney General Katie Fiala represented the Iowa Civil Rights Commission. Linda Grathwohl also appeared on behalf of the Commission. Complainant Mellissa O'Brien appeared and testified by telephone conference call. Respondent Kerry Inman did not appear as directed by the Prehearing Order issued on July 17, 2013. Inman did not attend the prehearing conference on July 17, 2013. Inman's copy of the Prehearing Order has not been returned as undeliverable mail. Inman submitted a letter that was received on July 25, 2013, and marked as Exhibit A and admitted into the record. Exhibit 1 was also admitted into the record.

FINDINGS OF FACT

In April 2012, O'Brien had physical custody of her son and was looking for a new place to live. O'Brien saw an advertisement for an apartment in Boone, Iowa. The Advertisement stated:

BOONE: 1 bedroom apartment, private entrance, private drive. No children, no pets. \$350 per month. Contact 704 Marion.

(Exhibit 1).

O'Brien was shocked by the advertisement and contacted the Commission. O'Brien inquired whether the landlord could post an advertisement stating the landlord would not accept children. Commission staff told O'Brien the advertisement was improper.

O'Brien contacted the landlord to view the apartment. When she spoke with the landlord, the landlord asked whether she had children and he stated he would not allow children to live in the apartment. The landlord would not permit O'Brien to view the apartment.

O'Brien was upset by the landlord's response. O'Brien testified it took her four months to find an apartment. O'Brien reported she was offended by the landlord's response.

CONCLUSIONS OF LAW

I. Default

In his letter, Inman indicated he was not going to attend the hearing. He did not request the opportunity to appear by telephone conference call. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the administrative law judge may enter a default decision or proceed with a hearing and render a decision in the absence of the party.¹ Inman failed to appear at the hearing and is in default. Pursuant to the State's request, the hearing proceeded on the merits.

II. Discriminatory Practice

A. Discriminatory Advertising

Under the Iowa Civil Rights Act ("ICRA"),

1. It shall be an unfair or discriminatory practice for any person, owner, or person acting for an owner, of rights to housing or real property, with or without compensation, including but not limited to persons licensed as real estate brokers or salespersons, attorneys, auctioneers, agents or representatives by power of attorney or appointment, or any person acting under court order, deed of trust, or will:

c. To directly or indirectly advertise, or in any other manner indicate or publicize that the purchase, rental, lease, assignment, or sublease of any real property or housing accommodation or any part, portion, or interest therein, by persons of any particular race, . . . or familial status is unwelcome, objectionable, not acceptable, or not solicited.²

Inman advertised an apartment in the newspaper stating "no children." Exhibit A. When O'Brien contacted Inman he inquired whether she had children. O'Brien has one child. Inman told her children would not be accepted. Inman refused to allow O'Brien to view the apartment. Inman violated the ICRA by advertising a property with the restriction, "no children."

¹ 161 IAC 4.4(1).

² Iowa Code § 216.8(1)c.

B. Damages and Other Relief

If the Commission determines at hearing that the respondent engaged in a discriminatory housing practice, the Commission may order appropriate relief, including actual damages, reasonable attorney fees, court costs, and other injunctive or equitable relief.³ The Commission may also assess a civil penalty between \$10,000 and \$50,000, depending on the number of prior discriminatory housing practices, if any, by the respondent.⁴ The State does not seek imposition of a civil penalty in this case, but seeks \$1,000 in emotional distress damages for O'Brien, and an order enjoining Inman from publishing advertisements stating he will not accept children for his rental properties.

O'Brien testified she was embarrassed by Inman's actions. The State has proven O'Brien is entitled to \$1,000 in emotional distress damages.

ORDER

Inman is ordered to pay \$1,000 in damages to O'Brien. Inman is further enjoined from publishing advertisements stating he will not accept children for any rental property. The Commission shall take any steps necessary to implement this decision.

Dated this 10th day of September, 2013.



Heather L. Palmer
Administrative Law Judge
515-281-7183

cc: M. O'Brien
AG – K. Fiala
K. Inman

Notice

An adversely impacted party may appeal a proposed decision to the Commission within 30 days after the issuance of the proposed decision.⁵ The appeal must be filed with the Commission in writing. The Commission's office is located at the Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-0201. The notice shall specify: (1) the proposed decision or order appealed from; (2) the party initiating the appeal; (3) the specific findings or conclusions to which exception is taken; (4) the grounds for relief; and (5) the relief sought.⁶

³ *Id.* § 216.15(11) a.

⁴ *Id.* § 216.15(11) b.

⁵ 161 IAC 4.23.

⁶ *Id.* 4.23(3).